TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~804~~ 33

UNITED MINE WORKERS OF AMERICA,
DISTRICT 12, PETITIONER,

vs.

ILLINOIS STATE BAR ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR CERTIORARI FILED DECEMBER 20, 1966
CERTIORARI GRANTED FEBRUARY 27, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 884

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, PETITIONER,

vs.

ILLINOIS STATE BAR ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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[fol. A] [File endorsement omitted]

[fol. 1]

IN THE SUPREME COURT OF ILLINOIS

No. 39,642

ILLINOIS STATE BAR ASSOCIATION, ET AL., Plaintiffs-Appellees,

vs.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Defendants-Appellants.

Appeal from the Circuit Court of Sangamon County.

Honorable Creel Douglas, Judge Presiding.

Abstract of Record—Filed December 10, 1965

COMPLAINT—Filed June 11th, 1964

Come now the Illinois State Bar Association, an Illinois not for profit corporation, and Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movsisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susler, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Plaintiffs, and for their complaint against the Defendant, United Mine Workers of America, District 12, state:

1. That the Plaintiff, Illinois State Bar Association, is a not for profit corporation organized under the laws of the State of Illinois, for the purposes, among others, of establishing and maintaining the honor and dignity of the [fol. 2] courts and of the profession of law, the protection of the public, the fostering and promoting of a high standard of professional ethics, and the due administration of justice in all courts in the State of Illinois, including the courts in the County of Sangamon.

2. That the function of the Committee on Unauthorized Practice of Law, acting for and on behalf of the Illinois State Bar Association, is, among other things, to further and maintain the purposes aforesaid.

3. That the Plaintiffs, Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movsisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susler, individually, are attorneys, duly licensed and admitted to practice law in the State of Illinois, members of the Illinois State Bar Association and of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association.

4. That Plaintiffs, as attorneys at law and by virtue of the franchise granted to each and every one of them, have practiced law in the State of Illinois for a long period of years and maintain offices for such purpose throughout the State of Illinois; and as a result of their individual efforts and activities as attorneys at law, each has acquired and now has a law practice of great value from which they severally enjoy and receive compensation and income.

5. That the Defendant is a labor union composed of mine workers and has offices in Springfield, Sangamon County, Illinois.

[fol. 3] 6. That for many years Defendant has been engaged in the practice of law in Sangamon County and other counties in the State of Illinois in that in the course of providing services for members it has, and still does, employ an attorney on a salary basis for the purpose of representing its members with respect to claims they may have under the provisions of the Workmen's Compensation Act of the State of Illinois.

7. That the Defendant has on occasion filed claims with the Industrial Commission of the State of Illinois for and on behalf of a member without obtaining the member's permission, authorization, or approval.

8. That Defendant is not and under the statutes of the State of Illinois cannot be licensed to practice law in the State of Illinois.

9. That despite its not having a license to practice law, Defendant has, in the manner hereinbefore stated, offered, furnished, and rendered legal services and advice.

10. That said activities of the Defendant are contrary to equity and good conscience, are in contravention of the rights of the Plaintiffs herein who are duly licensed as attorneys at law, are contrary to public policy, are in violation of the laws of the State of Illinois, and not only tend to degrade the legal profession and to bring the same into bad repute in the administration of justice, but also tend to mislead and defraud the public.

11. That if the Defendant is permitted to continue in the practice of law in the manner and form hereinbefore set forth, irreparable injury and damage will be occasioned [fol. 4] to the Plaintiffs, all members of the legal profession, and to the public, and other individuals, firms, corporations and associations will be encouraged to engage in and continue in the unlawful practice of law.

12. That this cause is instituted on behalf of the Plaintiffs herein and all other attorneys at law who may wish to join with them as well as for the benefit of the public and all of the courts of the State of Illinois.

13. That Defendant will continue the unauthorized practice of law unless appropriate action is taken by this court to prevent and enjoin the same.

Wherefore, Plaintiffs pray that a permanent injunction may be granted herein restraining and enjoining said Defendant, its agents and employees, from doing any of the following acts:

1. Giving legal counsel and advice.

2. Rendering legal opinions.

3. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of the State of Illinois or elsewhere.

4. Practicing law in any form either directly or indirectly.

5. Advertising, advising or holding itself out to members and others as practicing law or as having a right to practice law.

6. Charging or collecting fees, commissions or payments or apportioning dues of members in any form or manner for any legal services whatsoever rendered or to be ren- [fol. 5] dered by said Defendant or its agents or employees to or on behalf of members and any other persons; and for such other and further relief as to the Court may seem meet and just.

Illinois State Bar Association, an Illinois not for profit corporation, and Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movsisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susier, Individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Plaintiffs, By Curtis F. Prangley.

Chairman, Unauthorized Practice Law Committee, Illinois State Bar Association, 105 West Adams Street, Chicago, Illinois, Area Code 312-FR2-2552, By David J. A. Hayes, Jr.

Committee Counsel, Unauthorized Practice Law Committee, Illinois State Bar Association, and General Counsel, Illinois State Bar Association, 901 South Spring Street, Springfield, Illinois, Area Code 217-528-6408.

[fol. 6] Request for summons against Joe Shannon, as President, United Mine Workers, District 12, United Mine Workers Building, Springfield, Illinois.

Summons.

Sheriff's return showing service June 11, 1964.

Motion by Defendants for an order requiring Plaintiffs to make Complaint definite and certain, notice and proof of service thereof.

MOTION

Now comes Joseph Shannon, a member of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and come, also, all the members of said association made parties hereto by representation, by Edmund Burke, their attorney, and move the Court for an order in the above entitled cause directing the Plaintiffs to make their complaint definite and certain in the following particulars:

Stating the name or names, place or places or residence, and place or places of employment, of any person or persons for and on behalf of whom defendants filed a claim, or claims, with the Industrial Commission of Illinois without obtaining the member's permission, authorization or approval, and the date or dates of such filing.

Edmund Burke, Attorney for Defendants.

Edmund Burke, 217 South Seventh Street, Springfield, Illinois, Telephone: 528-7875.

[fol. 7] Order entered July 6th, 1964, requiring Plaintiffs to make Complaint more definite and certain.

Plaintiffs' answer to motion to make complaint more definite and certain and proof of service thereof. (Filed July 14, 1964.)

Come now the Illinois State Bar Association, an Illinois not for profit corporation, and Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movsisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susler, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Plaintiffs, by their attorney, David J. A. Hayes, Jr. and for answer to defendant's motion, to wit "Stating the name or names, place or places or residence, and place or places of employment, of any person or persons for and on behalf of whom defendants filed a claim or claims, with the Industrial Commission of Illinois without obtaining the member's permission, authorization or approval, and the date or dates of such filing" answer as follows:

Elery D. Morse, East Walnut Limits, Canton, Illinois, a member of the United Mine Workers District 12 was injured on or about July 18, 1961 in the course of his employment in or around Canton, Illinois.

In March of 1962, Elery Morse retained the services of Claudon and Elson, Attorneys at Law, 21 West Elm Street, Canton, Illinois, to file his application for adjustment of claim in regard to his claim against the Midland Electric Coal Corporation with the Industrial Commission of Illinois and to otherwise represent him in this matter.

[fol. 8] On or about June 28, 1962 Claudon and Elson filed an application for adjustment of claim for Mr. Morse with the Industrial Commission of Illinois in his claim against Midland Electric Coal Corporation, case No. 712133.

On July 23, 1962, M. J. Hanagan, Attorney for United Mine Workers District 12, filed an application for adjustment of claim for Mr. Morse with the Industrial Commission of Illinois in his claim against Midland Electric Coal Corporation, case No. 713647, without the consent, approval, authorization or knowledge of said Morse case No. 713647.

ANSWER—Filed July 31, 1964

Comes now Joseph Shannon, a member of District 12 United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and come also, all the members of said association made parties hereto by representation, by Edmund Burke, their attorney, and answer Plaintiffs' Amended Complaint as follows:

1) They admit the averments in Paragraph numbered (1) in the Amended Complaint.

2) They admit the averments in Paragraph numbered (2) in the Amended Complaint.

3) They admit the averments in Paragraph numbered (3) in the Amended Complaint.

4) They admit the averments in Paragraph numbered (4) in the Amended Complaint.

[fol. 9] 5) They admit the averments in Paragraph numbered (5) in the Amended Complaint.

6) They deny the averment in Paragraph numbered (6) in the Amended Complaint that they have been for many years engaged in the practice of law. They admit that they, severally and jointly, employ a competent attorney, who is a member of the Illinois State and the American Bar Associations, on a salary basis for the sole purpose of representing them and their defendants before the Industrial Commission in cases of injury and death arising out of and in the course of their employment as coal mine employees, which they and each of them have a legal right to do.

7) They deny that on any occasion they have filed claims with the Industrial Commission of Illinois for and on behalf of members without obtaining the member's permission, authorization or approval, and they deny that at any time M. J. Hanagan, attorney for United Mine Workers District 12, filed an application for adjustment of claim

for Elery Morse with the Industrial Commission of Illinois, without the consent, approval, authorization or knowledge of said Morse, and they say further that, even if true, such matter is immaterial to this case.

8) They admit that as an association they are not and cannot be licensed to practice law in the State of Illinois.

9) They deny that, except as above stated, they have offered, furnished, or rendered legal services and advice.

[fol. 10] 10) They deny the averments of Paragraph numbered (10) in the Amended Complaint.

11) They deny the averments of Paragraph numbered (11) in the Amended Complaint.

12) They deny the averments of Paragraph numbered (12) in the Amended Complaint.

13) They deny the averments of Paragraph numbered (13) in the Amended Complaint.

And the Defendants say that it appears from the face of the Complaint that the Plaintiffs are not entitled to the relief prayed, nor to any relief, wherefore they pray judgment dismissing the Complaint.

Joseph Shannon, and All Other Members of District 12 United Mine Workers of America, Defendants,
By: Edmund Burke, Their Attorney.

Proof of Service.

MOTION TO STRIKE AND FOR JUDGMENT ON THE PLEADINGS—Filed July 28, 1964

Comes now, Joseph Shannon, a member of District 12 United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and come also, all the members of said association made parties

[fol. 11] hereto by representation, by Edmund Burke, their attorney, and move the Court to strike the averment of Paragraph numbered (7) seven of the Complaint as amended

"(7) That the Defendant has on occasion filed claims with the Industrial Commission of the State of Illinois for and on behalf of a member without obtaining the member's permission, authorization, or approval.

Elery D. Morse, East Walnut Limits, Canton, Illinois, a member of the United Mine Workers District 12, was injured on or about July 18, 1961, in the course of his employment in or around Canton, Illinois.

In March of 1962, Elery Morse retained the services of Claudon and Elson, Attorneys at Law, 21 West Elm Street, Canton, Illinois, to file his application for adjustment of claim in regard to his claim against the Midland Electric Coal Corporation with the Industrial Commission of Illinois and to otherwise represent him in this matter.

On or about June 28, 1962, Claudon and Elson filed an application for adjustment of claim for Mr. Morse with the Industrial Commission of Illinois in his claim against Midland Electric Coal Corporation, case #712133.

On July 23, 1962, M. J. Hanagan, Attorney for United Mine Workers District 12, filed an application for adjustment of claim for Mr. Morse with the Industrial Commission of Illinois in his claim against Midland Electric Coal Corporation, case #713647, without the [fol. 12] consent, approval, authorization or knowledge of said Morse case #713647."

for the reason that the same, even if true, is immaterial to the only issue in this case which is whether or not the members of District 12 United Mine Workers of America

are practicing law by employing the services of an attorney on a salary basis for the sole purpose of representing them and their dependents in cases, under the Workmen's Compensation Act, of injury and death arising out of and in the course of their employment as coal mine employees.

And the Defendants move, further, for judgment on the pleadings for the reason that the Complaint as amended is substantially insufficient in law and in support of this motion for judgment on the pleadings submit the following:

(1) The averment of Paragraph Numbered (6) six of the Complaint

> "(6) That for many years Defendant has been engaged in the practice of law in Sangamon County and other counties in the State of Illinois in that in the course of providing services for members it has, and still does, employ an attorney on a salary basis for the purpose of representing its members with respect to claims they may have under the provisions of the Workmen's Compensation Act of the State of Illinois."

is not a statement of fact but a mere conclusion of the pleader.

(2) The Complaint as amended nowhere states a cause of action against the Defendants.

[fol. 13] (3) The Complaint as amended shows on its face that the Plaintiffs are not entitled to the relief prayed nor to any part thereof.

And the Defendants move for judgment on the pleadings in favor of the Defendants and against the Plaintiffs for the reasons above stated.

Proof of service and notice.

Order Nov. 5, 1964, denying motion to strike and for judgment on the pleadings.

Order November 5, 1964, motion to strike and for judgment on the pleadings denied.

MOTION BY DEFENDANTS FOR RE-CONSIDERATION OF ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS—Filed November 12, 1964

Come now, Joseph Shannon, a member of District 12 United Mine Workers of America, and also all members of the said District 12 made parties hereto by representation, by Edmund Burke, their attorney, and move the Court for re-consideration of its order of November 5th, 1964, denying their motion for judgment on the pleadings, and, as ground for this motion show that interference by the State of Illinois, as prayed for by the Plaintiffs, with the employment by the Defendants of attorneys of their own choice to represent them and their dependents, in cases of injury and death arising out of and in the course of their employment, and under the Workmen's Compensation Act, [fol. 14] would violate Section 19 of Article 2 of the Constitution of the State of Illinois, as follows:

> "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay."

and also the rights guaranteed them by the First and Fourteenth Amendments to the Constitution of the United States.

Wherefore, Defendants respectfully ask the Court to re-consider its order of November 5, 1964, and allow their motion for judgment on the pleadings.

Joseph Shannon, and all other members of District 12 United Mine Workers of America, Defendants,
By Edmund Burke, Their Attorney.

Interrogatories filed August 3, 1964. By obvious error the recital in the transcript states these interrogatories

were filed August 3, 1965. The Clerk's file mark on same shows August 3, 1964. Proof of service shows same.

Objections to interrogatories that answers to the same would be irrelevant and immaterial.

Proof of service.

[fol. 15] Order of December 3, 1964, denying motion for reconsideration of order denying motion for judgment on the pleadings, also sustaining and denying certain objections to interrogatories.

ANSWERS TO INTERROGATORIES

Names and addresses of all officers of District 12.

Area of jurisdiction, Illinois and Iowa.

District 12 has approximately 14,000 members, 8500 working, 5500 retired.

Addresses of each office.

Names and addresses of officers, members and employees responsible for legal aid.

Local unions designate an officer or members to assist injured members to prepare and file with the compensation legal department for the attorney complete reports of the injury containing all material facts.

Stuart J. Traynor, Taylorville, Illinois, is the attorney employed to take care of Compensation cases.

Sometimes another member or officer of the Local Union, occasionally a District Executive Board Member, interviews the injured member, may be at the mine, the home of the injured man or of the officer or member who helped him with his accident report to the attorney. The extent of the interview is determined by the nature of the injuries disclosed by the report.

The application to the Industrial Commission for adjustment of the claim is prepared by the attorney at the office in Springfield or West Frankfort.

[fol. 16] Applications for adjustment of claim are sent to the Industrial Commission by the attorney or under his direction from the two offices.

The attorney, since his appointment, has filed 590 applications for adjustment of claim and the amount collected by petitioners was $737,998.27.

The attorney has appeared at all Industrial Commission hearings.

No claims are settled by the attorney without benefit of hearing. All claims are set by the Industrial Commission for hearing and the claimant is notified to be present at the hearing to discuss any possible adjustment. This is done by the Arbitrator, the claimant and his attorney and the representative of the insurance company.

1318 applications were filed by M. J. Hanagan from January 1, 1961, to his death in 1963 and the amount collected by the petitioners was $1,859,640.65.

The attorney handles all negotiations with the insurance companies.

Amount of compensation and expense paid to attorneys from June 1961 to November 1964.

Stuart J. Traynor (Jan. through Nov. 1964) $11,366.66 expense $1,497.60.

Interrogatories 34 and 35.

34. Did union members hire present attorney?

35. If answer to 34 is yes—enclose copy of union constitution, minutes of union meeting, resolution or appropriate document which reflects the fact that the union members hired present attorney.

[fol. 17] Answers to Interrogatories 34 and 35.

Yes.

The twenty-fourth annual convention of District 12, United Mine Workers of America, consisting of delegates elected by the members of each Local Union, convened at Peoria, Illinois, on February 18th, 1913.

The report of the Secretary-Treasurer made on that day stated, among other things, that the establishment of a legal department had become an actual necessity; that, in many instances, the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees. The report recommended that the District Executive Board establish a legal department. It further suggested and recommended that such establishment should not mean that members be required to accept its counsel if they desired the services of others.

On February 25th the Committee on Officers' Reports reported to the Convention as follows:

> "We concur in the report of Secretary-Treasurer McDonald in establishing a legal department in connection with the organization, and recommend to the convention that the incoming executive board be instructed to establish such department."

Upon motion made and seconded the report of the committee was adopted.

On August 5th, 1963, at a meeting of the District Executive Board of District 12, duly called and held, consisting of the President, the Secretary-treasurer, and three [fol. 18] Executive Board members elected by the members of each Local Union, in his Board Member District, the action shown by the following record was had:

"The Executive Board of District 12, United Mine Workers of America, was called to order by Acting President Joe Shannon at 1:15 PM on Monday, August 5, 1963, with the following persons present: Acting President Joe Shannon, Secretary-Treasurer Edward H. Gibbons, and District

Board Members Gossett, Lisse and Ballard; Ruth Jesberg was Secretary to the meeting.

Acting President Shannon: Before we begin discussion of the grievance cases that will come before the meeting of the Joint Group Board tomorrow, we will have a short District Executive Board meeting.

As you know, William Hanagan was engaged temporarily to handle the Workmen's Compensation cases in District 12 following the recent death of his father, our attorney, M. J. Hanagan.

Several attorneys are interested in the permanent position to succeed Mr. Hanagan, and I would like your views and comments on these people and their qualifications.

General Discussion of applicants.

Board Member Lisse: I make a motion, Mr. Chairman, that you, as Acting President, be authorized and empowered to make arrangements with Attorney Stuart Traynor, Taylorville, Illinois, for the purpose of retaining him to handle the District 12 compensation cases.

[fol. 19] Board Member Ballard: I second the motion.

Motion Carried Unanimously.

Shannon: Since there is no further business to come before the Board today, we will adjourn this meeting and go on with our examination of the cases coming up tomorrow at the Joint Group Board.

Meeting adjourned at 2:10 PM."

Members and officers of each Local Union were informed of availability of present attorney by letter from the President of the District.

The attorney attends an office for the benefit of members at UMWA headquarters, Springfield, and at West Frankfort.

He has no regular schedule to be at either place.

Dues of each member have been $5.25 per month since November 1st, 1964.

No portion of dues is allocated to pay attorney's salary.

Insurance companies send settlement drafts to the employer who delivers same to the employee and takes release.

All of the settlement or award is paid to the injured member.

The attorney has represented no member or officer or employee of District 12 except before the Industrial Commission.

No officer, member or employee of the District receives directly or indirectly any fees or the like out of settlement or awards.

[fol. 20] No officer, member or employee is compensated above his usual wages for handling claims or obtaining information in behalf of the attorney or the union.

Exhibits attached to answers to interrogatories.

Ex. "A-1" Heading of report of accident filed by Elery D. Morse who is mentioned in the amended complaint.

Report to Attorney on Accidents

Legal Department—U. M. W. of A.
District No. 12.

Read this carefully and when filled out mail to Legal Department, District 12, U. M. W. of A., 601 United Mine Workers Building, Springfield, Illinois.

1. See that notice of every accident and claim for compensation is made upon the company within 30 days. (In hernia cases notice and claim must be made in 15 days.)

2. Compensation is not due in injury cases until three weeks after the injury. Do not make this report until a reasonable time has elapsed after compensation is due, and then only after demand on the company has been made, and either no compensation is paid, or not a sufficient amount.

3. The purpose of making reports in injury cases is to bring to the attorney's attention cases where compensation is not paid when due, or where compensation is not adequate in amount, or where compensation payments are discontinued before it is proper so to do; or where compensa-
[fol. 21] tion payments have been discontinued and there

yet remains compensation due for: 1—Temporary total, being time of inability to perform any work; 2—Medical, surgical and hospital services; 3—Partial incapacity, being the period when only partial earnings are possible; 4—Loss of a member, such as finger, toe, leg, hand, etc.; 5—Permanent disfigurement to head, hands or face; 6—Partial loss of the use of finger, hand, arm, foot or leg; and 7—Complete permanent disability.

4. Report all death cases not later than ten days thereafter.

5. It is useless to send these reports unless all questions are fully answered.

Ex. "A-2" Reverse side of report, used for fatal cases.

Ex. "B" Letter, Hanagan to all Local Officers and members.

Ex. "C" Letter, Shannon to all Local Officers and members.

Proof of service.

Motion by Plaintiff for leave to amend Complaint.

Notice to produce at taking of Traynor deposition all letters of agreement, contracts, etc., which evidence the employment of Stuart Traynor, Esq., by United Mine Workers of America, District 12.

[fol. 22]

DEPOSITION OF STUART J. TRAYNOR,
MAY 7th, 1965

I reside at Taylorville, Illinois. I am forty-six years old. I am an attorney at law, a graduate of St. Louis University. I graduated in June, 1950. I am admitted to practice in Missouri, Illinois, and the United States District Court. I am State Senator for the Fortieth District. My employment by the District 12 began in October, 1963.

My directions and authorization encompass representation of members in claims under the Workmen's Compensation Act. That is the total scope of my employment.

I receive a salary of $12,400 a year.

There are no limitations upon the number of cases I am to handle during a calendar year. My salary is not affected by the number of cases.

I receive a mileage allowance of ten cents per mile for actual travel by automobile. If I make use of public transportation I am reimbursed whatever the expense is. I am also allowed my actual hotel expense.

I advance no money in connection with hearings before the Commission.

I am not required to do any work outside the State of Illinois.

The United Mine Workers do not require me to do any other kind of work.

I do not maintain any office except at Taylorville. I have office space, that is, a room where I can sit down for conferences and examination of reports, in Springfield.

In connection with claims filed with the Commission there [fol. 23] are employees of the District available to me in both the Springfield and West Frankfort offices. They are paid by the District.

Applications and settlement contracts are dictated by me to these employees.

A member gets assistance in filling out forms from either of these secretaries if he desires it.

No member is contacted by anyone for the purpose of having me represent him.

I think it is generally known that they have a lawyer available to them because that situation has existed ever since the inception of the Industrial Commission.

Most applications for adjustment of claim are signed out of my presence. A member signs a report of injury and submits it to either of the offices. In most cases I have not seen the injured employee before filing the application unless he happens to come into the Springfield or West Frankfort office when I happen to be there. I would see them if they came to my office in Taylorville which sometimes happens.

The injured employee is instructed that if he has had medical attention he should obtain a report from the doctor. The Act requires the employer to furnish me a copy of the report by a company doctor. Sometimes I suggest that the employee obtain additional medical aid.

Many of the petitioners come in and consult with me before the hearing date.

Unless he comes in, or unless I need and send for him, I would not see him until the hearing date.

I make a determination of what I think the case is worth according to the provisions of the Act.

[fol. 24] The final determination of the amount is made by the petitioner. If the amount offered by the Company is not satisfactory then a hearing is had.

The compensation is paid directly to the miner.

I have never received any compensation over and above what I receive as salary.

No one has ever told me they came to me with other business because I represented the miners.

I learned that the District needed an attorney for compensation cases and was told to see Mr. Shannon, which I did. Then I received the letter dated September 26th, 1963. This is the letter:

United Mine Workers of America
Office of the President
District Twelve
United Mine Workers Building
Springfield, Illinois
Area Code 217, 522-9691

(Emblem)

September 26, 1963.

Mr. Stuart Traynor
Attorney at Law
Taylorville, Illinois

Dear Mr. Traynor:

The District Executive Board has authorized the undersigned to make arrangements with you to handle, as attor-

ney, compensation cases for members of District 12 and their dependents who need and desire your services.
[fol. 25] If acceptable to you, the salary will be $12,400 per year. You will also be allowed and paid reasonable expenses.

It will be your duty to see to it, so far as possible, with the help of secretaries in the Springfield and West Frankfort offices and officers of Local Unions, that no member or dependent loses his rights under the Act by reason of failure to avail himself of them in time. Also, to represent him before the Commission if he desires your services. If he is represented by other counsel you will immediately turn over his file to such counsel.

You will receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent.

If this arrangement is agreeable to you kindly let me know at your early convenience.

Very truly yours,

Joe Shannon,
Joe Shannon,
Acting President.

JS:RJ

I have frequently suggested to them that they could employ other counsel if they wished.

The amount collected on claims filed by me is $737,998.27 instead of the figure given in answer to Interrogatory 14 (d).

For the full year 1964 the number of claims filed was 416. The number concluded was 487 and the amount received $528,885.12.

[fol. 26] Motion by Plaintiffs for leave to amend Complaint by deletion of paragraph seven (7).

Objection by Defendants to allowance of motion by Plaintiffs for leave to delete paragraph 7, for the following reasons:

1. The Court has heretofore ruled, on November 5, 1964, denying the Defendants' motion to strike the same, that the same is material to the issue in this case, which is, whether or not the members of District 12 are practicing law by employing the services of an attorney on a salary basis for the sole purpose of representing them and their dependents under the Workmen's Compensation Act in cases of injury and death arising out of and in the course of their employment as coal mine employees.

2. Investigation, precipitated by the averments in the complaint, discloses that Elery D. Morse referred to therein, is an elderly man who sustained a permanent partial disability; acting upon bad advice, he retained counsel who, well knowing that he had and was entitled to the free services of counsel provided by himself and his fellow employees, took, for themselves out of his award the sum of ($1,795.00) One Thousand Seven Hundred Ninety-Five Dollars.

The averments of said Paragraph Seven should remain in the Complaint and the facts should be disclosed for the record as an apt illustration of the commercialism, and its attendant evils, the Plaintiffs are seeking to restore to the industrial accident field in the State of Illinois.

Proof of service.

[fol. 27] Order July 22, 1965, overruling objection to amendment of Complaint, allowing leave to amend Complaint and leave to amend answer.

Complaint amended by deleting paragraph 7.

AMENDMENT TO ANSWER—Filed July 9, 1965

Leave of Court having been first had and obtained, Defendants amend their answer to the Complaint herein by adding to Paragraph (6) of the said Answer, the following:

"And the Defendants say that their action in so employing an attorney was duly authorized by their District Executive Board on August 5, 1963, and by original authority

of the District Convention consisting of delegates elected by the members in each Local Union, at Peoria, Illinois, on February 25, 1913, and that the terms and conditions of such employment, which were accepted by the said attorney, are set forth in the following letter:

(Letter Shannon to Traynor dated September 26, 1963, shown in Traynor deposition.)

Court orders on motions for leave to amend Complaint and Answer.

MOTION FOR SUMMARY JUDGMENT

Come now the Illinois State Bar Association, an Illinois not for profit corporation, and Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movsisian, Henry [fol. 28] W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson, and Marshall A. Susler, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Plaintiffs, and, pursuant to Section 57 of the Illinois Civil Practice Act, moves this Court for an order of Summary Judgment in favor of the Plaintiffs permanently enjoining the Defendant, United Mine Workers of America, District 12, its agents and employees, from doing any or all of the following acts:

1. Giving legal counsel and advice.

2. Rendering legal opinions.

3. Representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of the State of Illinois.

4. Practicing law in any form either directly or indirectly.

5. Advertising, advising or holding itself out to members and others as practicing law or as having a right to practice law.

6. Charging or collecting fees, commissions or payments or apportioning dues of members in any form or manner for any legal services whatsoever rendered or to be rendered by said defendant or its agents or employees to or on behalf of members and any other persons.

In support of said Motion, Plaintiff attaches thereto and makes a part hereof, (1) copy of Defendant's answer and [fol. 29] amendment to paragraph 6, (2) Interrogatories propounded to Defendant and its answers thereto, and (3) Deposition of Stuart Traynor, Esq.

Wherefore, the Plaintiffs move that this Court enter Order of Summary Judgment for the Plaintiffs as a matter of law and issue a permanent injunction restraining and enjoining the Defendant, United Mine Workers of America, District 12, as prayed for in this complaint.

Affidavit and proof of service.

Amendment to Complaint by deleting Paragraph 7.

MOTION BY DEFENDANTS FOR SUMMARY DECREE—Filed August 6, 1965

Comes now, Joseph Shannon, a member of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and come, also, all members of said association, made parties hereto by representation, by Edmund Burke, their attorney, and move the Court for a summary decree in favor of the Defendants and against the Plaintiffs in the above entitled cause, for the reason that the Plaintiffs are not entitled to the relief prayed nor to any part thereof and that granting the same would be in violation of the rights of the Defendants protected by the First and the Fourteenth Amendments to the Constitution of the United States; and in support of this motion, Defendants make a part hereof, by reference, the Complaint filed herein and all

[fol. 30] exhibits attached to the motion for summary judgment heretofore filed herein by the Plaintiffs.

Joseph Shannon, and All Other Members of District 12, United Mine Workers of America, Made Parties Hereto by Representation, By: Edmund Burke, Their Attorney, 217 South Seventh Street, Springfield, Illinois 62701, Telephone: 528-7375.

I hereby certify that the foregoing motion is not interposed for delay and that in my opinion the same is well founded in law.

Edmund Burke.

Notice and proof of service.

ORDER—September 7, 1965

This matter coming on for hearing on the motion by the plaintiffs, Illinois State Bar Association, et al., for a summary judgment in their favor, and upon the motion by the defendants, United Mine Workers of America, District 12, for a summary decree in their favor, the parties being represented by their respective attorneys, and this Court having considered said motions, affidavits and exhibits sup-[fol. 31] porting and opposing the same, including the pleadings, interrogatories, answers to interrogatories and discovery deposition of Stuart Traynor, Esq., having heard arguments of counsel, and being fully advised in the premises;

Now, Therefore, this Court makes the following findings of fact and conclusions of law:

1. that there is no genuine issue as to any material fact in this cause

2. that as a matter of law the defendants have been and are engaging in the unauthorized practice of law by retaining an attorney (Stuart Traynor, Esq.) on a salary basis to represent their members with respect

to claims that they may have under the provisions of the Workmen's Compensation Act of the State of Illinois.

It Is Hereby Ordered, Adjudged and Decreed that

1. the motion for a summary decree of the defendants, United Mine Workers of America, District 12, is denied and overruled

2. the motion for a summary judgment of the plaintiffs, Illinois State Bar Association, et al., is granted and sustained

3. the defendants, United Mine Workers of America, District 12, its agents and employees are hereby permanently restrained and enjoined from doing any or all of the following acts:

1. Giving legal counsel and advice

2. Rendering legal opinions

3. Representing its members with respect to Workmen's Compensation claims and any and all other claims [fol. 32] which they may have under the laws and statutes of the State of Illinois

4. Employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois.

5. Practicing law in any form either directly or indirectly.

Enter:

Creel Douglass, Judge.

NOTICE OF APPEAL—September 16, 1965

United Mine Workers of America, District 12, Defendants-Appellants in the above entitled cause, hereby appeal to the Supreme Court of Illinois from the order and decree of the Circuit Court of the County of Sangamon, Illinois, entered in said cause on September 7, 1965, in favor of Plaintiff-Appellee and against the above named Defendants-Appellants, denying and overruling the Motion of Defendants-Appellants for a summary decree, allowing the Motion of Plaintiff-Appellee for summary judgment, and restraining and enjoining Defendants-Appellants, their agents and employees from doing any or all of the following acts:

1. Giving legal counsel and advice

2. Rendering legal opinions

3. Representing its members with respect to Workmen's Compensation claims and any and all other [fol. 33] claims which they may have under the laws and statutes of the State of Illinois

4. Employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois

5. Practicing law in any form either directly or indirectly.

Defendants-Appellants pray that said order and decree may be reversed and that Plaintiff-Appellee's Motion for summary judgment be denied and the injunction dissolved; and that Defendants-Appellants' Motion for summary decree be allowed and the Complaint dismissed.

Edmund Burke, Attorney for Defendants-Appellants, 217 South Seventh Street, Telephone: 528-7375, Springfield, Illinois 62701.

Proof of service.

PRAECIPE FOR RECORD—September 21, 1965

To: The Clerk of the Circuit Court of Sangamon County, Illinois:

You are hereby requested to prepare and make up a complete transcript of the record of your Court in the above entitled cause, to be used on appeal to the Supreme [fol. 34] Court of Illinois, including a placita, all pleadings, all motions and orders, all papers of record including Interrogatories and objections and answers thereto, depositions, the notice of appeal and proof of service thereof, together with your certificate that the same is a complete transcript of all proceedings had in your Court in said cause.

Filed and served September 21st, 1965.

Appeal Bond in the sum of $1,000 approved by the Court and filed September 21st, 1965.

Certificate of Clerk.

Respectfully submitted,

Edmund Burke, 217 South Seventh Street, Tel. 528-7375, Springfield, Illinois, Attorney for Defendants.

Gillespie, Burke & Gillespie, 217 South Seventh Street, Springfield, Illinois, Of Counsel.

[fol. 35] [File endorsement omitted]

[fol. 36]

No. 39,642

IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

Appellants' Brief—Filed December 10, 1965

* * * * * * *

[fol. 37]

The Jurisdictional Ground for Direct Appeal

The case involves a question arising under the constitution of the United States.

Illinois Supreme Court Rule 28-1 (A).

The question is whether the rights of the Defendants to engage in concerted activities for the purposes of their mutual aid and protection are protected by the First and the Fourteenth Amendments to the Constitution of the United States.

[fol. 38]

Points and Authorities

I.

The restraining order is violative of the rights of the Defendants to engage in concerted activities for the purposes of their mutual aid and protection.

Labor Management Relations Act, 1947, Title 29 USCA 157.

This Section of the Act is applicable even though no union activity is involved, and no collective bargaining is contemplated.

NLRB v. Phoenix Mutual Insurance Co., 167 Fed. (2nd) 983, at page 988. Certiorari denied 335 U. S. 845, 93 L. Ed. 395.

The First and Fourteenth Amendments to the Constitution of the United States protect, and a State, under its power to regulate the practice of law within its borders, may not infringe the rights of the Defendants to engage in the concerted employment of an attorney for the mutual protection of themselves and their dependents from the consequences of injury and death arising out of and in the course of their employment.

Brotherhood of Railroad Trainmen v. Virginia ex rel., 377 U. S. 51, 21 L. Ed. (2nd) 89, 93, 84 Sup. Ct. 1113;

NAACP v. Button, 371 U. S. 415, 429, 9 L. Ed. (2nd) 405, 83 Sup. Ct. 328.

[fol. 39]

II.

A judgment or decree must be supported by a material fact or facts in the record.

The National Can Company v. The Weirton Steel Company, 314 Ill. 280, 285.

[fol. 40]

IN THE SUPREME COURT OF ILLINOIS

No. 39642

[Title omitted]

MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE, A MOTION FOR AN EXTENSION OF TIME FOR PLAINTIFFS TO FILE THEIR BRIEF AND ADDITIONAL ABSTRACT UNTIL FEBRUARY 15, 1966—Filed December 30, 1965

Come now the plaintiffs, the Illinois State Bar Association and its Committee on the Unauthorized Practice of Law, by their undersigned attorneys and respectfully move this Honorable Court to dismiss the appeal of the defendants, United Mine Workers, District 12, which appeal the defendants are attempting to bring directly to this Court

from the Circuit Court of Sangamon County under Rule 28-1(a) of this Court. The alleged grounds for this appeal is the claim of the defendants that there is present in this case a constitutional question; namely, whether the rights of the defendants to engage in concerted activities for the purpose of their mutual aid and protection are protected by the First and Fourteenth Amendments to the Constitution of the United States. It is the position of the plaintiffs that there has been a total failure on the part of the defendants to present to this Honorable Court a question arising under the Constitution of the United States based on the facts of this case.

In The Alternative, the plaintiffs respectfully move this Honorable Court that, if this Motion is denied, they be [fol. 41] given until February 15, 1966, to file their additional abstract and brief.

Respectfully submitted,

Bernard H. Bertrand, 234 Collinsville Avenue, East St. Louis, Illinois, Telephone: A.C. 618-BR 1-5100.

David J. A. Hayes, Jr., 901 South Spring Street, Springfield, Illinois, Telephone: A.C. 217-528-6408.
Attorneys for the Plaintiffs.

December 29, 1965.

[fol. 42]

IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING PLAINTIFFS' MOTION TO DISMISS—
Filed January 14, 1966

And now, on this day, the Court having duly considered the motion by appellee to dismiss this appeal, and being now fully advised of and concerning the premises;

It Is Hereby Ordered that the motion by appellee to dismiss this appeal be, and the same is, denied.

[fol. 43] [File endorsement omitted]

[fol. 44]

No. 39642

IN THE
SUPREME COURT OF THE STATE OF ILLINOIS

March Term, A.D. 1966

[Title omitted]

Additional Abstract of Record—Filed February 10, 1966

Deposition of STUART J. TRAYNOR.

Q. Will you state your name please?
A. Stuart J. Traynor.
Q. Where do you reside?
A. Taylorville, Illinois.
Q. What is your age?
A. Forty-six.
[fol. 45] Q. What is your business or profession?
A. Attorney at Law.
Q. Of what school are you a graduate of, referring particularly to the law school?
A. St. Louis University.
Q. And when did you graduate?
A. 1950—June 1950.
Q. And of what State Bar Association are you a member—I don't mean State Bar Associations, what bars have you passed, what State Bars?
A. I am admitted to practice in Missouri and Illinois and I am authorized to practice before the Federal District Court.
Q. Have you been admitted to practice before any higher court other than the Federal District Court?
A. No, sir.
Q. In addition to the practice of law what other job do you hold of a public nature?
A. I am a State Senator in Illinois.
Q. And of what particular district?

A. The 40th District.

Q. That includes the town of Taylorville, is that correct?

A. That is right. That is Christian, Shelby and Fayette Counties.

Q. Now directing your attention to the lawsuit filed by the Illinois State Bar Association and members of the [fol. 46] unauthorized practice of law committee against United Mine Workers of America District 12, answers to interrogatories presented to us have indicated that you presently are employed by the United Mine Workers of America District 12, is that correct?

A. That is correct.

Q. And when did that employment commence?

A. In October of 1963.

Q. What was the nature of that employment? What was the purpose? What were you to do for the United Mine Workers of America?

A. My directions and authorization encompasses the representation of members of the District 12 in claims for Workmen's Compensation Benefits under the Illinois Workers Compensation Act.

Q. And is that the total scope of your employment for the United Mine Workers of America to represent employees only before the Workmen's Compensation Board, is that right?

A. Yes, sir.

Q. Or should I say the Industrial Commission, which ever way you want to call it.

A. Right.

Q. Do you receive a salary from the United Mine Workers of America District 12?

A. Yes, sir.

Q. What is that salary?

[fol. 47] A. $12,400.00 a year.

Q. And are there any limitations with respect to the number cases that are to be handled by you during a calendar year?

A. There are no such limitations.

Q. You are then responsible or obligated to represent employees, no matter how many may have claims during any particular year, is that right?

A. That is right.

Q. Does your salary increase or decrease based upon the number of cases that you may handle?

A. No. The number of cases has nothing to do with my salary.

Q. So that if you only had one case in one year or five hundred cases your salary would be the same, is that correct?

A. Yes, sir, that is correct.

Q. Now do you receive any additional compensation or remuneration from the United Mine Workers of America District 12 other than that salary?

A. Yes.

Q. Will you tell us what that is?

A. I receive a mileage allowance of ten cents a mile for actual travel by automobile or if I—ah—make use of some other public transportation facility I am reimbursed whatever that expense is and I am also allowed my actual hotel expense.

[fol. 48] Q. Now in connection with filing claims before the Industrial Commission is there any filing fee required?

A. No.

Q. Do you advance any money on behalf of the United Mine Workers or the employees in connection with any hearing that is had?

A. No, sir.

Q. Are there any other types of unusual expenses that you can think of that you may also get reimbursed by the Mine Workers other than what you have told us?

A. No.

Q. Does the United Mine Workers ever require you, as part of your employment for them, to do any work outside of the State of Illinois?

A. No.

Q. Does the United Mine Workers require you, as part of your employment with them, to do any other type of work for them other than the representation of its members who have been injured and who have a claim under the Workmen's Compensation Act of the State of Illinois?

A. No, with the exception that there might on some occasion be some kind of an incidental consultation that they might have with me just seeking advice of some kind.

Q. Would you explain for instance, an example of such a thing?

[fol. 49] A. I can't remember one right now.

Q. Well—

A. But I don't mean—what I mean to say Mr. Bertrand if Mr. Shannon, or one of the Board Members or one of the Members even or someone else, should make inquiry of me as to something that was personal to them I would answer them, of course.

Q. I see. However, you do not consider yourself as a person hired, under the arrangements that you have, to give them any advice on the running of the United Mine Workers District 12, is that correct sir?

A. That is correct sir.

Q. Or any of its internal problems, is that true?

A. That is true.

Q. Your main function, as I understand by virtue of the payment given you by the United Mine Workers, is to represent its individual member when that person is hurt in a mining accident wherein he would qualify under the Workmen's Compensation Act of the State of Illinois, is that correct?

A. That is correct.

Q. All right. In representing an individual miner before the Workmen's Compensation Board or the Industrial Commission do you—strike that.

[fol. 50] Do you maintain offices other than at Taylorville, Illinois for your services with the United Mine Workers?

A. I do not maintain any office Mr. Bertrand.

Q. Does the Mine Workers Union maintain office space for you in any of their locations?

A. Yes. I have office space in the Springfield office. I can't say that I have office space in the West Frankfort office but I make use of the West Frankfort office.

Q. And when we are talking office space it is, I take it, meaning room in which you yourself can sit is that correct?

A. Yes, sir.

Q. It is reserved for you personally, is that correct?

A. That is correct.

Q. All right. Now in connection with the claims that may be filed with the industrial commission are there employees of the United Mine Workers available to you in both the Springfield and West Frankfort office?

A. Yes.

Q. For preparation of applications for adjustment of claim settlement contracts and all the necessary legal papers that must be filed with the Compensation Commission?

A. Yes there are employees available to me.

[fol. 51] Q. And are they paid by you or are they paid by the United Mine Workers District 12?

A. No they are paid by United Mine Workers of America District 12.

Q. Will you tell me the names of—strike that. When we talk about people being available to you are we stating that they actually do work of the nature we were talking of, preparing these documents, and there are some specific person in each of these 2 offices that do this type of work, person or persons? In other words of preparing application for adjustment or claims settlement contracts and so forth?

A. Sir so that I understand you correctly do you mean independent of my work or independent of anything that I might do? I am thinking Mr. Bertrand—

Q. Either way.

A. Well—

Q. In other words whether you might dictate it to them or you don't?

A. That is the only way it is done generally speaking is that they are dictated by me to the secretary and—who are employed in the Springfield office and the secretary who is employed in the West Frankfort office.

Q. All right. Now when a person is hurt let's say in the West Frankfort—which I imagine there must be a number of counties that get into that particular office as opposed to the Springfield area?

[fol. 52] A. Yes.

Q. And you are not available, and that employee would come into the Mine Workers Office at West Frankfort and is he presented the necessary forms to fill out with the assistance of a secretary or some personnel down there other than yourself?

A. When you say an employee I presume you mean a member?

Q. A member. I am sorry I should mean a member, yes.

A. Yes, sir—yes they get—a member of the union gets assistance from—if they request it—from the secretaries in both the Springfield and the West Frankfort office if they request it to help them fill out a form, yes.

Q. All right. Now let's take the circumstance of a man being injured in a mine which would qualify him to make a claim under the workmen's compensation act against a coal company. Is he contacted in advance after this incident by representatives of the United Mine Workers for the purpose of having you represent him before the Industrial Commission?

A. No, sir.

Q. How is he notified that he has available to him your services?

A. Well—if he contacts an office of the local union he will be advised that this—that my services are available to him.

[fol. 53] Q. Is it not a generally known fact among the members of the union by virtue of previous distribution of information that they have a lawyer available to them for the purpose of presenting their claim before the Industrial Commission?

A. Oh—I think that is probably generally known because it is a situation that has existed almost since the inception of the Industrial Commission.

Q. And whether or not they know you personally they do know that there is a lawyer available to them, is that right?

A. I would assume they would know that, yes.

Q. And for that matter only when there is a case handled by you do you get to know that individual, is that true?

A. That is true.

Q. You would have no reason to have any contact, personal or otherwise, with miners down in West Frankfort Area when you are situated and have your practice in the Taylorville Area, is that true?

A. I don't understand the question.

Q. You wouldn't have any contact so that a person would seek you out as an individual lawyer in the West Frankfort Area because of its distance from your normal area of practice, isn't that true?

A. Well—I—I think I understand what you mean, but I couldn't correctly state that I wouldn't on some occasion—

[fol. 54] Q. No—no—

A. —have a client from West Frankfort just because I live in Taylorville.

Q. No, but in general you would not be one of the lawyers in that area they would be familiar with, is that true?

A. No.

Q. You might have an occasional client in that area but you wouldn't have access to all members of the United Mine Workers in view of the fact you have been hired by United Mine Workers to represent them?

A. I think I understand what you mean. I am not going to shut myself off from clientele in West Frankfort Mr. Bertrand.

Q. I am not trying to say you are shutting your office off but the normal thing would be you would not have the exposure to represent them as you would—

Mr. Burke: I object to that question because it is entirely unrelated to the development of anything pertaining to the issues of this case whether Mr. Traynor is practicing law or not.

Q. Now these applications, are they signed by the member in your presence or are they signed before you ever see that they have an application filed?

A. No, most of them are signed out of my presence.

[fol. 55] Q. All right. And what is the operation procedure about getting the particular application to your attention and also to the—to be filed with the Industrial Commission? What is the procedure there?

A. Well—when you say application I presume you mean application for adjustment of claim?

Q. Application for adjustment of claim, yes.

A. The member if he contacts his—if some member of the local union or else he should come into either the West Frankfort or Springfield offices would be furnished with the form on his—at his request which is entitled Report to Attorney and he would then complete that form, sign it and it would be sent in to either the Springfield Office or the West Frankfort Office as the case might be and then the case is filed from that form.

Q. I see. Then am I correct from your answer that it is not necessary for the injured member to come into either these two offices? He may obtain the report to the attorney right at his mine I suppose through his local representative or steward or whatever you might call them, is that it?

A. Yes.

Q. And he would fill it out and then send it in to either of two branches, is that it?

A. Yes.

Q. To either the Springfield or West Frankfort office?

A. Yes.

[fol. 56] Q. Then even without a man present a secretarial job is accomplished filling out the form, is that correct?

A. Yes.

Q. Now when does the man—let me ask you this, in an application for adjustment of claim is it necessary that the injured man sign same?

A. After he—when he files the report to attorney he has authorized me to sign it on his—on his behalf.

Q. Do you have with you—do you have a copy of such report to attorney?

A. I don't have one with me, I think there is one—

Q. Is one attached here?

A. There is one attached to the answer to interrogatory.

Mr. Burke: There is answers made by this so and so brought in by you over at Canton.

Mr. Hayes: Yes, here it is.

Mr. Bertrand: I see. All right.

Mr. Burke: Exhibit A I think it is.

Mr. Bertrand: All right.

Mr. Burke: That is our friend Mr. Moore that you want to take out of the case now. I want him to stay in.

Q. This report is in no fashion an employment contract between the man and yourself, isn't that true? It is merely [fol. 57] a report to you as the hired attorney of the United Mine Workers of an accident and various questions relate to that accident, is that right?

A. Well—I am not going to make any such conclusion Mr. Bertrand because I presume that the man when he files that report with me is—that it constitutes a request that his case be filed with the Industrial Commission.

Q. May I ask if you can find any language in the report to attorney that in anyway instructs you to file such a claim or hires you to do so as an individual? And I am showing you now the Exhibit which was attached to the answers to interrogatories, Exhibit A, which has in its beginning the words Report to Attorney on accident legal department—UMW of A District 12. It has some printed instructions numbering a total of five in front.

A. No, I don't think there is any such specific language in the report.

Q. All right, thank you, I think we determined earlier that the application for adjustment of claim—of the record.

Whereupon there was then had an off the record discussion.

Q. Does not require the man's name. It is signed by the attorney, is that correct?

A. The application for adjustment of claim?

Q. Yes.

A. Yes, that is true.

[fol. 58] Q. And his name is merely typed in there so that the Industrial Commission gets the necessary information of the party who is injured and who is the respondent coal company involved, is that it?

A. Yes, sir.

Q. All right. Now after you have received the report and the local office has been forwarded the application for adjustment of claim do they send the application of adjustment of claim to you to file with the Industrial Commission or the—do the respective two offices send it on to the Industrial Commission?

A. No, they send them on.

Q. They send them on?

A. Directly to the Industrial Commission.

Q. Is your signature required or is a person authorized to sign your name on these forms?

A. Yes.

Q. Do you authorize a person in either office to sign your name so this can go forward and be expedited?

A. Yes. The secretaries are authorized to do that.

Q. All right. So you at the time of application of adjustment of claim filing have in most instances not seen the injured employee, is that correct?

A. That is correct.

[fol. 59] Q. When is the first time that you see the injured employee in the general run of cases I mean? I can understand there might be exceptions but I am talking about the general run of the cases?

A. Well—it depends. If the injured employee comes into the office of course I am going to see him prior to his—to the hearing on his case.

Q. Now we are talking about the office, will you elaborate on that?

A. Either Springfield or West Frankfort office when I have occasion to be there.

Q. You do not consider the office so far as you are concerned your law office in Taylorville?

A. No—no.

Q. You are talking only about United Mine Workers office where you are working for them at a yearly stipend?

A. Yes, that is correct but I would see them if they come in the Taylorville office which sometimes happens.

Q. Because some of them live in that area, true?

A. Yes.

Q. All right. Do you in working up a case for its presentation to the Industrial Commission it is my understanding that the major interests of course is medical isn't that correct?

A. Yes.

[fol. 60] Q. Medical. And do you make the arrangements for the obtaining of reports from doctors or is this done by the local offices processing the claim before—after it has been filed?

A. Neither.

Q. Tell me how it is done.

A. If it is done it is done by the injured workman—by the petitioner.

Q. He will—is he instructed to get these reports to you or what is it—how is it done?

A. He is instructed that if he obtains any medical assistance or a report arising out of medical assistance that he has received from that accident that it would be helpful to me in presenting his case if I could have that made available to me.

Q. In these cases the respondent coal company also desires medical examination of course of the injured workman too, isn't that true?

A. In almost every instance.

Q. And that will be by their own doctor of course?

A. Of course.

Q. And you receive—

A. Excuse me, as well as the petitioner.

Q. Well, of course he will have already have had some immediate need for a doctor before he got in to you—filed [fol. 61] his report of accident isn't that true? In most instances he has already seen a doctor because of the injury?

A. Yes, but generally it is a doctor furnished by the respondent coal company.

Q. I see. Do you require them under those circumstances where the respondent coal company has furnished him medical assistance that they furnish you with a report?

A. The Workmen's Compensation Act provides they are required to furnish me one on request.

Q. All right. In developing the man's claim so that he can—so that he can appear or so that when he appears before the industrial commission arbitrator do you only in certain cases seek other medical—strike that.

Does the man only determine whether or not he gets other medical attention other than the company furnished doctor or do you on occasion recommend that he seek other medical attention or other medical advice?

A. I—I will on occasion suggest that perhaps in order to be properly prepared that he seek other medical attention. Sometimes that is—that suggestion is made to him because we feel that it would be helpful in developing the case and sometimes we feel that maybe he hasn't had adequate medical attention.

Q. And is this done by you individually or is it done without even consulting you by these various representa- [fol. 62] tives in the two offices in Springfield or West Frankfort?

A. No, I think that that would only be done by myself.

Q. All right, okay. Now when a case is ready to be presented to an arbitrator of the Commisssion does an injured

employee appear before the arbitrator at any time? Is there any time when an injured employee appears before an arbitrator without you present?

A. I don't think there is anytime when they would do that.

Q. All right. You appear, in your judgment, at all times at least since you have been hired, is that correct?

A. Yes, sir.

Q. And is it quite possible that the major number of persons who appear at that time are seen by you for the first time personally at the time of the arbitrator's hearing?

A. No I don't think that that is true.

Q. What is your practice in connection with preparing for appearing before the arbitrator on a number of cases? Please understand that I realize that there are hearings in certain locations.

A. Yes.

Q. And that there are a number of miners going to appear on that particular day before an arbitrator and of [fol. 63] course you are there to present their matter. Now what is the procedure that you follow in say for instance going down to DuQuoin?

A. Uh-huh.

Q. And appearing. Tell me what you do with respect to say the five or ten people who are going to be before the arbitrator on that specific day?

Q. Well—it is generally known in the—in the—in Southern Illinois that I am available—I will be in the West Frankfort office on certain days and it is quite a regular custom for the petitioners in these cases to come into the West Frankfort office and consult with me prior to his hearing date. Now I am not saying all of them do that but many of them do.

Q. Do you send out any specific instructions to them to make this advance appearance setting it before you—or with you?

A. No I don't send any specific instructions.

Q. So that if a person did not—strike that.

The only thing that a man would get then, that is an injured miner, would be a notice to appear before the Arbitration Commission on a certain day at a certain town, is that right? That would be—he would receive such a notice?

A. Generally speaking that is correct.

Q. And if he did not desire to appear at either West Frankfort or Springfield office at some time prior to that time when you would be avalaible under a schedule then [fol. 64] the first time that you would see him would be the day of the hearing, is that true?

A. You mean if he did not choose to come in?

Q. Yes.

A. To either the Springfield or West Frankfort office?

Q. Yes.

A. Prior to that?

Q. Yes.

A. I wouldn't see him prior to the hearing day.

Q. The first time would be the day of the hearing—at the hearing?

A. Unless I needed him—unless he come in either the Springfield or West Frankfort office.

Q. You then prepare your representation or presentation of his claim from the file that you developed in the interval of time from the application for adjustment of claim filing or report to attorney to the date of the hearing, is that true?

A. Well—from the file and examination of the petition.

Q. Well, now that examination, are we talking about a doctor's examination or yours?

A. No, mine.

Q. All right. Okay. Then as I understand it the compensation act has certain percentages for values of injuries [fol. 65] of various parts of the body, true?

A. Yes, sir.

Q. You then make a determination of what you think the case is worth on percentage values, is that true?

A. Yes, sir.

Q. And I take it at that time you then consult with the attorney for the respondent coal company to see what his interpretation of the value is, is that correct?

A. Exactly.

Q. And this is sort of a pre-hearing negotiation session, is that right?

A. That is correct.

Q. And if you are satisfied with the amount that the respondent coal company representative is willing to pay for the particular injury that you observed and you talked to the man about and whether he is still having difficulties, I suppose, you either settle it right then and there or at least by agreement you settle it or else you have a hearing, is that true?

A. The final determination is made by the Petitioner.

Q. I realize—yes, that is true. I should have—you make a recommendation to the individual miner that is hurt, is that correct? Based upon what you—your recommendation [fol. 66] and whether or not they reach close to or meet your recommendation, is that right?

A. That is right.

Q. All right. Now if the amount is not satisfactory then you have a hearing, is that true?

A. That is true.

Q. If the amount is satisfactory you present the—that to the Commission in another form, is that right?

A. Yes, sir.

Q. These are—are these—this is sometimes known as settlement contract, I believe, or something like that. When you do reach agreement what are the documents that you use—when you do reach an agreement or—what is the procedure?

A. It depends on what the respondents request. If the respondent requests a settlement contract then, of course, it is done by way of settlement contract. If the respondent feels that the—that the sum that has been agreed upon has accrued they sometimes feel that there is no need for a settlement contract and we just furnish them with a dis-

missal and, of course, they by law are required to file a final report with the Industrial Commission disclosing all of the—all of their payments.

Q. All right. Do you—now when the—a settlement has been reached and money is to be paid to the individual [fol. 67] miner, does that money—is that money paid by draft wherein you are included as a payee on that draft?

A. No.

Q. Do you receive the draft for the purpose of forwarding on to your—to the injured miner?

A. Hardly ever. I can't recall ever—that ever having happened.

Q. In other words it is paid directly to the miner, is that right?

A. Yes.

Q. Whatever the agreement may be?

A. Yes.

Q. All right. Now in the course of any particular member of the United Mine Workers District 12 hearing or procedure at the end of it have you ever received compensation over and above the salary that you are paid by the United Mine Workers District 12?

A. No.

Q. Now in connection with representing the miners and as an off-shoot of it, have you ever had any of these men whom you have represented and have concluded their claim come to you as an individual lawyer for other legal services?

A. As a result of having represented them?

Q. Yes.

A. Before the—

[fol. 68] Q. By virtue of the contact that you had with them as a miner.

Mr. Burke: Now that question is objected to. That hasn't anything to do with the question whether District 12 is practicing law or not. Someone comes to him after the conclusion of a case and employs his services privately that is a different matter.

Mr. Bertrand: Will you answer, Senator, regardless of his objection I am still entitled to an answer, then we can argue about it later.

A. I don't know.

Q. You don't know. Why don't you know may I ask?

A. I don't just have any way of knowing. No one has ever told me they came to me because of that.

Q. Have you in the past since September 26th, 1963, have you represented any miners in your private practice of law?

A. Oh—I think I have, yes.

Q. Have you represented any miners outside say for instance your immediate three county area?

A. No.

Q. All right. I can understand that.

A. I don't remember any.

Q. All right. In other words no one from the West Frankfort area has hired you for any private purposes?

[fol. 69] A. No.

Q. What in general, may I ask, were the type of work you might have done for miners in your area as a private practitioner?

A. Generally speaking I think it would probably be in connection with probate matters more than anything else.

Q. All right. Have there been many or just a few?

A. I—that would be very—relatively few.

Q. Now interrogatories were served upon the United Mine Workers District 12 and answers were supplied by Mr. Shannon who, as I understand it, is President of the United Mine Workers District 12, or was at the time these were answered. Is that correct?

A. Yes, he was then and now is.

Q. I see. Now a specific question was asked, Number 14, which reads as follows: "Since the appointment of the present attorney how many applications for adjustment of claims has he filed before the Industrial Commission." And we were, of course, at that time referring to you, is that correct Mr. Traynor?

A. Yes, sir.

Q. And it is my understanding since the appointment you filed 590 applications at the time counsel answered, is that—

A. I think that is correct, yes.

[fol. 70] Q. You yourself did not compile the information, one of the girls in the office of the United Mine Workers compiled it, is that correct?

A. That is correct.

Q. From their records which they keep, is that true?

A. Yes.

Q. Is it a fact, sir, your yourself don't keep the records of these injured miners? You only keep them while they are active, is that true? I mean you turn them into the United Mine Workers or they keep a duplicate file or how is it worked?

A. No, they are returned to either Springfield or West Frankfort office and they are kept there.

Q. The second part of that question: "How many have been closed." And it lists the number of 637 which, of course, is in excess of 590 you have filed. Now will you explain that figure?

A. You mean why there is—

Q. The difference in the figures.

A. There are always a number of these cases that are pending over a period of time and there had been quite a large number of these that had accumulated when I was hired because of the fact that my predecessor, Mr. M. J. Hanagan, had been in ill health for a period of time and there was a number of these that he hadn't—he hadn't closed as many cases as he normally would have.

Q. And the files then were files of the United Mine Workers District 12 as opposed to Mr. Hanagan's files, [fol. 71] is that right? I mean they were turned over to you when you accepted this appointment, is that right?

A. Yes.

Q. Although they were initialed by Mr. Hanagan, Mike Hanagan, or by his son Bill?

A. Yes.

Q. Upon your appointment all of them became your responsibility, is that true?

A. Yes.

Q. And you have carried on those and either have concluded those by this time or are in the process of concluding any that might still be pending, is that true?

A. That is right.

Q. Now in answer to another interrogatory it shows how many claims were settled by present attorney with insurance companies without benefit of hearing on claim and answer reads in part no claims are settled by attorney without benefit of hearing. Now that isn't completely accurate, is that true? In the sense that the settlement or agreed settlement is reached and then settlement is presented for approval, is that it?

A. That is the procedure.

Q. That is the procedure.

Mr. Burke: I object to that question. That is a misleading question. Read that question again.

[fol. 72] Mr. Bertrand: I will be glad—how many claims were settled by the present attorney with insurance companies without benefit of hearing.

Mr. Burke: Without benefit of hearing. Everybody has the benefit of a hearing if they want it.

Mr. Bertrand: We are differing about hearing.

A. We are being technical about what constitutes a hearing.

Mr. Bertrand: Off the record.

Whereupon there was then had an off the record discussion.

Mr. Bertrand: I believe that is all the questions I have.

Examination by Mr. Hayes:

Q. Mr. Traynor when did you first learn that the United Mine Workers District 12 was looking for a legal counsel in this field and how did you learn about it, as best you can remember?

A. Having been associated or having been involved in—in the Workmen's Compensation matters over a period of years it has been my—it has been necessary for me to attend hearings before the arbitrator for the Industrial Commission frequently and—ah—this is just information that just kind of becomes public knowledge insofar as the people who work—who do this kind of work are concerned. I don't know when or how I found out really.

Q. Probably sometime in 1963?

[fol. 73] A. Yes.

Q. What was the first official contact with the Union about this and how did it arise?

A. Oh—I think probably in July or August of 1963 when the District Board Member who lives in Kincaid, Illinois told me that Mr. Shannon would like to talk to me about this.

Q. Did you subsequently talk to Mr. Shannon?

A. Yes.

Q. What was discussed at this meeting between you and Mr. Shannon?

A. That it had been necessary for them—that they were hiring an attorney to carry on the work that Mr. Hanagan had previously been doing.

Q. Did you tell Mr. Shannon that you were interested in the job?

A. Yes.

Q. What next occurred in the employment trend?

A. Well—the next thing that occurred I think was when I got the letter from Mr. Shannon advising me that I had—that I had been hired as a result of the action taken by the District 12 Board.

Q. That would be this letter of September 26, 1963, signed by Mr. Shannon?

A. Yes, sir.

Q. Did you ever appear in furtherance of this employ-

[fol. 74] ment before the union membership or at a Union Board Meeting?

A. I am sorry I didn't understand the question.

Q. Excuse me. In furtherance of your securing this job did you ever appear before the Union or the Union Board at which your qualifications for the job were discussed or acted upon by either the Board or the Membership?

A. Well—I appeared before Mr. Shannon and the Board Members. I don't know that all of them were present at the time. It seems to me that they were. And then the Board took further action after that but I wasn't present at the time this action was taken.

Q. Would you characterize that as sort of an interview.

A. Yes.

Q. In which they were trying to ascertain your qualifications and interests?

A. Yes, I would say so.

Q. And subsequent to that the next thing you knew was this letter from Mr. Shannon?

A. Yes.

Q. When you had that original conference with Mr. Shannon that you mentioned they were interviewing a number of attorneys for this position or was there any conversation along that line?

[fol. 75] A. I believe that he might have mentioned that there had been other applications or applications other than mine.

Q. Did you ever fill out a formal application?

A. No.

Q. This was all oral?

A. Yes.

Q. Now I believe you testified—you testified that you saw at least some of the miners prior to the filing of the adjustment of claim form or consulted with them otherwise. Did you ever or were there occasions when you were talking to them that you suggested to them or advised them that they could seek other counsel if they did not want your counsel?

A. Oh, yes, definitely.

Q. Did you suggest at all that this was beneficial, non-beneficial or no opinion?

A. That what was beneficial or not beneficial?

Q. Did you ever point out to them if they went to a private attorney that it would cost them a fee to do so whereas you could do this in furtherance of your employment at no cost to them?

A. No I do not think I have ever had any such discussion. No I don't think so.

Q. Did many of the injured miners ever ask you if they should go to other counsel?

A. Again I couldn't say how many but sometimes they do. [fol. 76] Q. Did you leave it with them that they were just to make up their own mind under the facts as they understood them and as you understood them?

A. Very definitely.

Mr. Hayes: That is all I have.

Re-examination by Mr. Bertrand:

Q. Senator Traynor, Mr. Burke, the attorney for the United Mine Workers District 12, has prior to this deposition handed to me a letter addressed to you under date of September 26th, 1963, signed by Joe Shannon, Acting President of the United Mine Workers of America, and has also handed to me xerox copy of that particular letter. Is this the first official document that you received relative to your employment by the United Mine Workers as their attorney to handle member's compensation claims?

A. I think it is the only document that I ever received.

Q. All right. And did you, by letter, accept this document? In other words, the conditions laid out in this letter of appointment?

A. I don't remember writing a letter in reply.

Q. You probably called them up and said I will take it?

A. I'll take it—I'll take it—I'll take it.

Q. All right. But it expresses, does it not, the understanding that you have operated upon since this letter in [fol. 77] representing the union and appearing with members before the Industrial Commission, is that correct?

Mr. Burke: I think that question assumes he is representing the union. He doesn't represent the union at all.

Mr. Bertrand: This is a matter of determination by the Court and not by you or I, Mr. Burke.

A. No,—

Mr. Bertrand: What was the question again?

Whereupon the reporter then read the question.

A. Generally speaking that is correct, yes.

Q. Now it sets forth in there the amount of your salary as you have already told us plus the fact that you are to receive reasonable expenses that you incur and the fact that you will receive help in both the West Frankfort and the Springfield office in expediting the representation, is that correct?

A. That is right.

Q. And you explained to us in greater detail what that has been, is that correct?

A. Yes.

Mr. Bertrand: Now I am going to have this marked as Deposition Exhibit Number 1.

Whereupon said document was duly marked, for purposes of identification, as Deposition Exhibit Number 1, as of this date.

[fol. 78] Q. Now I will show you what has been marked as Plaintiff's Exhibit Number 1, Senator Traynor, and ask you if that is not a Xerox copy of the letter we just referred to and discussed?

A. Yes, it is.

Mr. Bertrand: Off the record.

Whereupon there was then had an off the record discussion.

Q. Now Senator Traynor, prior to the deposition there was a discussion between Mr. Burke, yourself, one of the employees of the United Mine Workers and Mr. Hayes

and myself, concerning answers to interrogatory Number 14b. Isn't that correct?

A. Yes.

Q. And it was indicated at that time there was an error in the total calculations given in the original answers—

A. Yes.

Q. —isn't that also correct?

A. Yes.

Q. Instead of the sum $947,111.41 the correct figure, according to a recapitulation, should be $737.00—$737,-998.27?

A. Yes.

Q. And that difference is based upon a breakdown as follows: From October to December of 1963 there were—there was filed in your name 174 applications for adjust-
[fol. 79] ment of claim. There was closed in that same period 150 cases for a total amount collected of $209,113.14.

A. Yes.

Q. You want to refer to that?

A. No.

Q. And that for the period of January through December of 1964, a full year, the amount of—the number of cases filed were 416. The number of cases concluded were 487 for a total of $528,885.12.

A. Yes, that is correct.

Q. The amount of or number of cases filed still were 590 as you had previously indicated or as were previously indicated in these answers and the closed cases were 687 as previously indicated and the only difference then was in the total amount?

A. Yes.

Mr. Bertrand: I thank you very much.

Mr. Traynor: Yes, sir.

Mr. Bertrand: That is all.

(Deponent excused.)

[fol. 80]

INTERROGATORIES AND ANSWERS THERETO

1. State the names and addresses of all officers of United Mine Workers, District 12.

1. Joseph Shannon, President and International Executive Board Member, 212 South 18th Street, Herrin, Ill.

Edward H. Gibbons, Secretary-Treasurer, 2107 South State Street, Springfield, Ill.

Herman Lisse, District Executive Board Member, Board Member District 4, Kincaid, Ill.

Jess Ballard, District Executive Board Member, Board Member District 6, Elkville, Ill.

Chester Gossett, District Executive Board Member, Board Member District 7, 1505 East Oak Street, West Frankfort, Ill.

2. State the area of jurisdiction of United Mine Workers, District 12.

2. Illinois and Iowa.

3. State the number of members of United Mine Workers, District 12.

3. Approximately 14,000 members. (8,500 working members and 5,500 retired members.)

4. State the address of each and every office of United Mine Workers, District 12.

4. President, 800 Reisch Bldg., Springfield, Ill.

Secretary-Treasurer, 204 Reisch Bldg., Springfield, Ill.

[fol. 81] Board Member, District 4, Blakely Bldg., Taylorville, Ill.

Board Member, District 6, Audrey Bldg., DuQuoin, Ill.

Board Member, District 7, 218 East Main St., West Frankfort, Ill.

5. State the names and addresses of every employee employed in each and every office of United Mine Workers, District 12.

5. President's office—

Joseph Shannon, 212 South 18th St., Herrin, Ill.
Ruth Jesberg, 1728 South 6th St., Springfield, Ill.

Secretary-Treasurer's office—

Edward H. Gibbons, 2107 South State St., Springfield, Ill.

Lois Hanahan, 615 Eastman Ave., Springfield, Ill.
Eleanor Mitts, 911 South 14th St., Springfield, Ill.
Dorothy Peddicord, 1211 Daniel St., Springfield, Ill.

Office of Board Member Gossett at West Frankfort—
Vivian Allen, 1002 East Elm St., West Frankfort, Ill.

6. State the names and addresses of every officer, member or employee responsible for legal aid of any kind for United Mine Workers, District 12.

[fol. 82] 6. All the officers and Board Members above named and the following—

Edward Lamm, International Special Representative, 1025 North Main St., Lewistown, Ill.

Floyd Morris, District Special Representative, RFD No. 4, Thompsonville, Ill.

Ruth Jesberg and Vivian Allen, Secretaries above named.

Also, Local Unions generally designate an officer or member to assist other members in preparing and filing reports of accidents occurring in mines over which they have jurisdiction. The District does not have the names of such individuals.

7. State the name and address of the present attorney described in paragraph 6 of your Answer.

7. Stuart J. Traynor, 302 East Market St., Taylorville, Ill.

8. Detail very specifically how the present attorney recevies information concerning an injury to a member of United Mine Workers, District 12.

8. Members, either by themselves, or with the assistance of some other member, or officer, of the Local Union, prepare, sign and file for the attorney with either the Springfield or the West Frankfort office, a report of accident like the one signed and filed by Elery D. Morse who is mentioned in the amended [fol. 83] complaint herein, a copy of which is attached hereto and marked Exhibit "A." (See, also Exhibit "B".)

9. Does the present attorney see and interview each injured member before starting claim?

9. No.

11. If answer to nine is no—who interviews injured member—where—and what is the extent of the interview?

11. Sometimes another member or officer of the Local Union. Occasionally a District Executive Board Member. Interviews may be had at the mine, the home of the injured person or of the officer who helps him with his accident report. The extent of the interview is determined by the nature of the injuries disclosed by the accident report to the attorney.

12. Who prepares the initial claim papers?

12. If by "initial claim papers" is meant the report to the attorney of accident, they are prepared by the injured person or by someone else under his direction.

If it means the application to the Industrial Commission for adjustment of claim, that is prepared under the direction of the attorney in the office at Springfield or West Frankfort.

13. Are these papers filed directly from a union office or branch office or are they sent to the present attorney and forwarded from his office?

[fol. 84] 13. Applications for adjustment of claim are sent to the Industrial Commission by the attorney, or by his secretary under his direction, from the Springfield and West Frankfort offices.

14. Since the appointment of the present attorney

a. How many applications for adjustment of claim has he filed before the Industrial Commission?

b. How many have been concluded?

c. What was the aggregate amount sought?

d. What was the total amount collected?

14. (a) 590.

(b) 637.

(c) The maximum amount prescribed by law for the injury described in each case.

(d) $947,111.41.

15. Has present attorney personally appeared at all Industrial Commission hearings representing injured members in their claims?

15. Yes.

17. How many claims were settled by present attorney with insurance companies without benefit of a hearing on the claim?

17. No claims are settled by the attorney without benefit of a hearing. All claims are set by the Industrial Commission for hearing and the claimant is always notified to be present at the hearing to discuss any possible settlement. This is done by the Arbitrator, the claimant and his attorney and the representative [fol. 85] of the insurance company. We have no separate record of claims so adjusted.

18. How many applications for adjustment of claim were filed by William D. Hanagan before the Industrial Commission?

a. How many have been concluded?

b. What was the aggregate amount sought?

c. What was the total amount collected?

18. During the period from July 1st-Sept. 30, 1963, during which time William D. Hanagan served as attorney, twenty applications for adjustment of claims were filed. Only those were filed upon which the time limit was about to expire.

(a) Eighty-seven.

(b) Maximum prescribed by law in each case.

(c) $100,723.24.

19. How many claims were settled by William D. Hanagan with insurance companies without benefit of hearing on the claim?

a. What was the total amount of claims settled?

19. Same answer as in No. 17.

20. How many applications for adjustment of claims were filed by M. J. Hanagan before the Industrial Commission? (From January 1, 1957, until his death.)

a. How many have been concluded?

b. What was the aggregate amount sought?

c. What was the amount collected?

[fol. 86] 20. 1,318 applications were filed by M. J. Hanagan from January 1, 1961, until his death.

(a) 1,328 have been concluded.

(b) Maximum amount prescribed by law in each case.

(c) $1,859,640.65.

21. How many claims were settled by M. J. Hanagan with insurance companies without benefit of hearing on the claim?

a. What was the total amount of claims settled?

21. Same answer as in Nos. 17 and 19.

22. Did William D. Hanagan personally appear at all Industrial Commission hearings representing injured members in their claims?

22. Yes.

24. Did M. J. Hanagan (from January 1, 1957 to his death) personally appear at all Industrial Commission hearings representing injured members in their claims?

24. Yes.

26. Does present attorney handle all settlement negotiations with the insurance companies?

26. Yes.

28. Did William D. Hanagan handle all settlement negotiations with the insurance companies?

28. Yes.

30. Did M. J. Hanagan handle (from January 1, 1957 [fol. 87] to his death) all settlement negotiations with the insurance companies?

30. Yes.

33. What monetary arrangements were made with:
    a. M. J. Hanagan (January 1, 1957 to his death).
    b. William D. Hanagan.
    c. Present attorney. In answering this question set set forth the exact amount either on a monthly or yearly basis.

33. The attorney is paid $12,400 a year plus legitimate expenses.

(a) M. J. Hanagan

(1961) $12,400.00 Expense $2,236.54
(1962) $12,400.00 Expense $2,554.79
(1963) January thru June
$62,200.00 Expense $844.16

(b) William D. Hanagan
(July thru Sept. 1963)
$3,099.96 Expense $323.05

(c) Stuart J. Traynor
(Jan. thru Nov. 1964)
$11,366.68 Expense $1,497.60

38. Where does present attorney maintain his office for the benefit of the union members?

38. Present attorney maintains an office in UMWA headquarters at 800 Reisch Building, Springfield, and UMWA headquarters at 218 East Main Street, West Frankfort.

[fol. 88] 39. Does he appear at any office of the union in connection with his employment?

39. Yes.

40. If answer to thirty-nine is yes—give days and hours of his schedule.

40. The attorney does not have a regular schedule to be in either office.

41. What are the current dues of each member?
    a. How much is allocated to the international?
    b. How much to district union?
    c. How much to local union?

41. Prior to October 1st, 1964, $4.25 per month. Since October 1st, 1964, $5.25 per month.
(a) ********
(b) ********
(c) ********

43. Where does the insurance company send the settlement drafts:
a. Present attorney?
b. Union officer, member or employee?
c. Injured member?

43. Employer, who delivers same to employee and takes release.

44. When settlement is approved or award is made by Industrial Commission, does insurance company issue draft payable to injured member and present attorney?

44. No.

[fol. 89] 45. Is all of the settlement or award paid to injured member? If not, what is withheld and for what purpose?

45. Yes. None is withheld.

46. Are drafts from insurance companies deposited in a trust account by attorney and his personal checks then issued to injured member? Enclose photocopy of all personal checks issued in this respect by present attorney.

46. No.

Respectfully submitted,

Bernard H. Bertrand, 234 Collinsville Avenue, East St. Louis, Illinois;

David J. A. Hayes, Jr., 901 South Spring Street, Springfield, Illinois, Attorneys for Plaintiffs-Appellees.

[fol. 90] [File endorsement omitted]

[fol. 91]

No. 39642

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

[Title omitted]

Appellees' Brief—Filed February 25, 1966

NATURE OF THE CASE

This is a complaint in chancery brought by the Illinois State Bar Association and by the individual members of its Unauthorized Practice of Law Committee against United Mine Workers, District 12 in the Circuit Court of Sangamon County praying that the defendants-appellants (hereinafter referred to as the Mine Workers) be permanently enjoined and restrained from engaging in the practice of law; and specifically, that they be enjoined and restrained from employing attorneys on a salary or retainer basis to represent their members and their members' [fol. 92] dependents with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of the State of Illinois.

The Mine Workers, in their answer to this complaint, denied that they were engaging in the practice of law, but admitted that they do employ an attorney on a salary basis for the purpose of representing their members and their members' dependents with respect to Workmen's Compensation claims before the Industrial Commission of Illinois.

Since there was no dispute as to any material fact in the case, both plaintiffs-appellees (hereinafter referred to as the Unauthorized Practice of Law Committee) and the Mine Workers moved for summary relief. The Cir-

cuit Court of Sangamon County denied the motion for a summary decree filed by the Mine Workers which prayed for the dismissal of the complaint, granted the motion for summary judgment filed by the Unauthorized Practice of Law Committee and entered an order granting to the Unauthorized Practice of Law Committee all of the relief prayed for in their complaint.

The Mine Workers thereupon appealed directly to this Court from the Circuit Court of Sangamon County contending that this case involves a question arising under the Constitution of the United States. The question, according to the Mine Workers, is whether their rights to engage in concerted activities for their mutual aid and protection are protected by the First and Fourteenth Amendments to the Constitution of the United States.

The Unauthorized Practice of Law Committee contends—

[fol. 93] —That the alleged constitutional question is not in fact a question at all. We acknowledge that the Mine Workers do have the constitutionally protected right to engage in concerted activities for their mutual aid and protection and accordingly the question stated by the Mine Workers is not a question but an acknowledged fact.

—*That if there is a constitutional question in this case, the question is whether or not a union or any association has a constitutionally protected right to employ an attorney on a salary basis to represent its members and its members' dependents with respect to their legal claims arising under the laws and statutes of the State of Illinois.*

—That the State of Illinois has a legitimate interest in, and the right to exercise reasonable regulatory powers over, the practice of law, which powers have repeatedly been exercised by the State of Illinois to curb associations' salaried attorney plans.

—That this regulatory power is a legitimate exercise of the powers of the State of Illinois and its possible impact on the constitutionally protected rights of the Mine Workers to engage in concerted activities for their mutual aid and protection is far too remote to cause any doubt as to its validity.

—That the order of the Circuit Court of Sangamon County is fully supported by the facts of the record.

[fol. 94] POINTS AND AUTHORITIES

I.

The Mine Workers have failed to present to this Court a constitutional question.

Illinois Supreme Court Rule 28-1(A);
Brotherhood of Railroad Trainmen v. Virginia ex rel., 377 U.S. 1, 5-6, 12 L. Ed. 2d 89, 93 (1964);
NAACP v. Button, 371 U.S. 415, 9 L. Ed. 2d 405 (1963).

II.

The practice of law by the defendants-appellants by means of employing an attorney on a salary basis to represent their members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois is not a constitutionally protected right and accordingly falls well within the regulatory power of the State of Illinois.

Brotherhood of Railroad Trainmen v. Virginia ex rel., 377 U.S. 1, 8, 12 L. Ed. 2d 89, 94 (1964);
NAACP v. Button, 371 U.S. 415, 420, 421, 423-426, 435-437, 443, 445, 446, 9 L. Ed. 2d 405, 410-414, 419, 420, 424, 425, 426 (1963);
In re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391 (1958).

[fol. 95]

III.

This Court has consistently held that organizations, including not for profit organizations, which hire lawyers to represent their members are engaging in the unauthorized practice of law.

People ex rel. Courtney v. Association of Real Estate Taxpayers of Illinois, 354 Ill. 102, 108-110 (1933);

People ex rel. Chicago Bar Association v. The Motorists Association of Illinois, 354 Ill. 595, 598, 599 (1933);

People ex rel. Chicago Bar Association v. Chicago Motor Club, 362 Ill. 50, 56, 57 (1935).

IV.

The Illinois Brotherhood case clearly states that a union may recommend lawyers to its members, but there may be no financial connection of any kind between the lawyers and the union.

In re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391, 392-398 (1958).

V.

The Virginia Brotherhood case holds that a union may recommend lawyers to its members and therefore it is in accord with the decision of this Court in the Illinois Brotherhood case.

Brotherhood of Railroad Trainmen v. Virginia ex rel., 377 U.S. 1, 2, 8, 12 L. Ed. 2d 89, 90, 91, 95 (1964).

[fol. 96]

VI.

The professional services of a lawyer should not be controlled or exploited by a lay agency which intervenes between client and lawyer. A lawyer's relation to his

client should be personal and the responsibility should be direct to the client.

Canon 35 of the Canons of Professional Ethics of the Illinois State Bar Association;
Canon 35 of the Canons of Professional Ethics of the American Bar Association.

VII.

Summary Judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein there is no genuine issue as to any material fact, is to be encouraged.

Allen v. Meyer, 14 Ill. 2d 284, 291, 292 (1958).

[fol. 97] STATEMENT OF FACTS

(Additional facts not fully set forth in the Mine Workers Statement of Facts)

There is no dispute as to any material fact in this case.

Between January, 1961 and June, 1963, M. J. Hanagan, Esq. was employed by the Mine Workers on a salary basis for the purpose of representing individual members of United Mine Workers, District 12 and those members' dependents with reference to claims before the Industrial Commission of the State of Illinois. Mr. Hanagan was paid a salary of $12,400.00 in 1961, $12,400.00 in 1962 and $6,200.00 in 1963 until his death in June of 1963. He also received expenses amounting to $2,236.54 in 1961, $2,554.79 in 1962 and $844.16 for the period of January through June of 1963. (Add. Abst. 44)

During this time M. J. Hanagan, Esq., filed 1318 applications for adjustment of claim and as a result of these applications, injured members and their dependents received $1,859,640.65. (Add. Abst. 43)

Following the death of Mr. Hanagan in June of 1963, his son, William D. Hanagan, Esq. was employed by the Mine Workers and was paid a salary of $3,099.96 and ex-

penses of $323.05 for the period between July, 1963, and September, 1963. (Add. Abst. 44)

In September, 1963, Stuart J. Traynor, Esq. was employed by the Mine Workers at a salary of $12,400.00 a year and is currently so employed by the Mine Workers. (Abst. 22)

[fol. 98] In describing his employment by the Mine Workers, Mr. Traynor stated that in July or August of 1963, a district board member of United Mine Workers, District 12, told him that the then Acting President of United Mine Workers, District 12, a Mr. Shannon, wanted to talk to him about a possible employment situation with the union. Subsequently Mr. Traynor was interviewed by President Shannon and the board members of the Union and in September, 1963, he was offered employment by the Mine Workers which he accepted. (Add. Abst. 30, 31)

Between October and December, 1963, 174 applications for adjustment of claim were filed in the name of Mr. Traynor and 150 claims were concluded for a total of $209,113.14. During the full year of 1964, 416 applications for adjustment of claims were filed in the name of Mr. Traynor and 487 cases were concluded for a total of $528,885.12. (Add. Abst. 35, 36)

Mr. Traynor explained how the United Mine Workers, District 12, plan works. Injured members are furnished by the union with a union form entitled Report to Attorney on Accidents which form advises the injured members to send said form to the Legal Department, District 12, United Mine Workers of America. When this union form is filed, Mr. Traynor presumes that this constitutes a request that he file an application for adjustment of claim with the Industrial Commission although there is no language on the form that employs Mr. Traynor as the attorney for the injured member or authorizes him to file a claim on his behalf. (Add. Abst. 8-14)

The application for adjustment of claim is prepared by secretaries in the offices of the union, the signature of the injured member is typed on the form, the secretaries are

[fol. 99] authorized to sign Mr. Traynor's name to the claim form, and when the preparation of the claim is completed, the claim form is sent by the secretaries directly to the Industrial Commission. In most instances Mr. Traynor has not seen the injured member at the time the claim form is filed with the Industrial Commission. (Add. Abst. 14-16)

Between the time of the filing of the claim and the hearing before the Industrial Commission, Mr. Traynor does not send out any specific instructions to the injured member or see him with reference to his claim. Generally speaking the only thing an injured member receives prior to the hearing is the notice to appear before the Industrial Commission. (Add. Abst. 20)

Mr. Traynor stated that it is generally known among the members of the Union that he will be at certain Union offices on certain days and that he is available for consultation prior to the day the claim is set for hearing before the Industrial Commission if the injured member desires to come in and see him. (Add. Abst. 20)

Mr. Traynor prepares his representation or presentation of the claim from his file and from examination of the petition. He makes a determination of what he thinks the claim is worth and then conducts a pre-hearing negotiation with the attorney for the respondent coal company. If the respondent coal company accepts the determination made by Mr. Traynor, Mr. Traynor recommends to the injured member that he accept the determined dollar figure for his claim. (Add. Abst. 21-23)

If Mr. Traynor and the respondent coal company are unable to work out a settlement, then a hearing on the [fol. 100] merits is held before the Industrial Commission. (Add. Abst. 23)

The value of the settlement is paid directly to the injured member and Mr. Traynor receives no fee out of the award. His compensation for handling these claims is the yearly salary that the union pays him. (Add. Abst. 24)

[fol. 101]

Argument

I.

The Mine Workers have failed to present to this Court a constitutional question.

Rule 28-1(A) of this Court provides that appeals from the final judgment of a circuit court shall be taken directly to this Court in cases involving a question arising under the Constitution of the United States or of the State of Illinois.

The question alleged to be presented by the Mine Workers "is whether the rights of the defendants to engage in concerted activities for the purpose of their mutual aid and protection are protected by the First and the Fourteenth Amendments to the Constitution of the United States." This is the basis that the Mine Workers give in their brief (page 6) as the jurisdictional ground for their direct appeal. *They do not allege as the jurisdictional ground for their direct appeal that the practice of law by the Mine Workers by means of their salaried attorney plan as aforesaid is constitutionally protected.*

We acknowledge that the Mine Workers do have constitutionally protected rights to engage in concerted activities for the purpose of their mutual aid and protection. There is no question constitutional or otherwise about this. It is a fact. It is not a "question" before the Court.

Although we contend that the Mine Workers have failed to raise a constitutional question, we feel we should reply to their argument that the restraining order of the Circuit [fol. 102] Court of Sangamon County is violative of their rights to engage in concerted activities for the purpose of their mutual aid and protection.

They cite the *Labor Management Act,* 1947, Title 29, USCA 157 and *NLRB* v. *Phoenix Mutual Insurance Company,* 167 F. 2d 983 as standing for the proposition that a union may employ an attorney on a salary basis to represent its members and its members' dependents with refer-

ence to their legal claims under the statutes and laws of Illinois. This obviously is absurd. Congress, in enacting the National Labor Relations Act and the Labor Management Act, never intended these acts to foster union employment of attorneys on a salary plan; nor did Congress seek by these acts to overthrow state regulation of the practice of law.

The Mine Workers next cite the *Virginia Brotherhood* case and the *Button* case in support of their position. The United States Supreme Court in the Virginia Brotherhood case said (pages 5-6):

> "It cannot be seriously doubted that the First Amendment's guarantees of free speech, petition and assembly give railroad workers the right to gather together for the lawful purpose of helping and advising one another in asserting the *rights Congress gave them in the Safety Appliance Act and the Federal Employers Liability Act* statutory rights which would be vain and futile if the workers could not talk together freely as to the best course to follow." (emphasis ours)

First, the United States Supreme Court was talking in the *Virginia Brotherhood* case about federally protected rights under *Federal statutes* and *not* about rights under the statutes and laws of a state such as the State of Illi- [fol. 103] nois; and second, this case is absolutely devoid of any issue regarding a salaried attorney plan. So too is the *Button* case where again there was no issue of a salaried attorney plan.

The Mine Workers have presented no constitutional question in this case. They indulge in an argument which is not relevant to the only possible constitutional issue in this case namely *whether or not a union has a constitutionally protected right to employ an attorney on a salary basis to represent its members with reference to their legal claims under the laws and statutes of the State of Illinois.*

The Mine Workers cite no authorities in support of their position as to this constitutional issue, and a search of case and statutory law will find none.

II.

The practice of law by the Mine Workers by means of employing an attorney on a salary basis to represent their members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois is not a constitutionally protected right and accordingly falls well within the regulatory power of the State of Illinois.

The constitutional issue in this case is not whether or not union members may engage in concerted activities for the purpose of their mutual aid and protection as constitutionally protected, but *whether or not a union has a constitutionally protected right to employ an attorney on a salary basis to represent its members and its members' dependents with respect to their legal claims under State laws.*

[fol. 104] The Mine Workers have cited no authorities which stand for the proposition that a union may employ an attorney as aforesaid. Neither the *Virginia Brotherhood* case nor the *Button* case, which are the only cases relied upon by the Mine Workers, decide this issue favorably to the Mine Workers. Both cases are clearly distinguishable from this case in the facts and law involved.

The *United States Supreme Court in the Virginia Brotherhood* case held (page 8) that the First and Fourteenth Amendments to the United States Constitution protect the rights of Brotherhood members through their Brotherhood to maintain and carry out *their plan for advising members who are injured to obtain legal advice and for recommending specific attorneys.* (emphasis ours) We have no quarrel with this and in fact we urge the Mine Workers to follow the decision in this case and the decision in the *Illinois Brotherhood* case by recommending to their

members and their members' dependents attorneys whom they feel are competent to handle their legal claims without placing said attorneys on a direct salary relationship with the Union. A simple reading of these cases clearly discloses that there was nothing before the Court concerning a plan whereby a union employed an attorney on a salary basis to represent its members under State laws.

The Mine Workers refer to the *Button* case in their brief. Since they do not develop this case in support of their position we assume that they do not regard it as an authority for the current practice. We certainly concur. We do feel, however, that we should comment on this case briefly.

The Virginia State Conference of the NAACP maintained in the 1950's a legal staff of fifteen (15) attorneys, [fol. 105] all of whom were negroes and members of the NAACP, for the purpose of handling litigation aimed at ending racial segregation in the public schools of the Commonwealth of Virginia.

The staff was elected at the Conference's annual convention. Each legal staff member agreed to abide by the policies of the NAACP which insofar as they pertain to professional services, limited the kinds of litigation in which the NAACP would assist. Thus the NAACP would not underwrite ordinary damage actions, criminal actions in which the defendant raised no question of possible racial discrimination, or suits in which the plaintiff sought separate but equal rather than fully desegregated public school facilities. The staff decided whether a litigant was entitled to NAACP assistance. The Conference defrayed all expenses of litigation in an assisted case, and usually, although not always, paid each attorney on the case a per diem fee, not to exceed $60.00, plus out of pocket expenses. None of the staff received a salary or retainer from the NAACP; the per diem fee was paid only for professional services in an NAACP-assisted case. This per diem payment was smaller than the compensation ordinarily received for equivalent private professional work.

In 1956, the Virginia Legislature added a Chapter 33 to the provisions of the Virginia Code forbidding solicitation of legal business by a "runner" or "capper" to include in the definition of a "runner" or "capper" an agent for an individual or organization which retains a lawyer in connection with an action to which it is not a party and in which it has no pecuniary right or liability. Acting under this statute, the Virginia Courts enjoined [fol. 106] the NAACP from continuing with their aforesaid legal assistance plan.

In reviewing this case, the United States Supreme Court, striking down this State statute, clearly set the tenor of the litigation when it said (pages 435-437):

> "We cannot close our eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community of Virginia; litigation assisted by the NAACP has been bitterly fought. In such circumstances, a statute broadly curtaining group activity leading to litigation may easily become a weapon of oppression, however even-handed its terms appear. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens. It is apparent, therefore, that Chapter 33 as construed limits First Amendment freedoms."

Pin-pointing the flavor of this litigation even further, Justice Douglas in his concurring opinion said (pages 445-446):

> "This Virginia Act is not applied across the board to all groups that use this method of obtaining and managing litigation, but instead reflects a legislative purpose to penalize the NAACP because it promotes desegregation of the races. * * *
>
> "The bill, here involved, was one of five that Virginia enacted 'as parts of the general plan of massive resistance to the integration of schools of the state under the Supreme Court's decrees.'"

The *Button* case and the present litigation have no common denominator. The NAACP employed lawyers on a per diem basis, but no lawyer on their staff was paid a salary or a retainer; the Mine Workers are employing an attorney on a salary basis. The legal staff [fol. 107] of the NAACP would not handle for its members and others ordinary damage suits or in fact any litigation that was not directly related to civil rights, specifically desegregation of public schools. The Mine Workers do employ an attorney for the sole purpose of handling ordinary damage actions for their members. The main reason for the NAACP's legal assistance plan is found at page 443 of the United States Supreme Court Opinion:

> "Lawsuits attacking racial discrimination, at least in Virginia, are neither very profitable nor very popular. They are not an object of general competition among Virginia lawyers; the problem is rather one of an apparent dearth of lawyers who are willing to undertake such litigation."

In no sense is there a lack of competition nor a dearth of lawyers in Illinois today who are willing to represent clients in compensation cases. There are many Illinois lawyers who would be pleased to represent the individual members and the members' dependents of United Mine Workers, District 12 with reference to compensation claims. We regard, therefore, the *Button* case as completely distinguishable from the present case.

The most important aspect of the *Button* decision as it relates to this case is to be found in the opinion of Justice White who wrote an opinion which concurred in part and dissented in part from the majority opinion. In his opinion Justice White said (page 447):

> "If we had before us, which we do not, a narrowly drawn statute proscribing only the actual day to day management and dictations of the tactics, strategy and conduct of litigation by a lay entity such as the

> NAACP, the issue would be considerably different, at least for me; for in my opinion neither the practice of law by such an organization nor its management of the litigation of its member or others is con- [fol. 108] stitutionally protected. Both practices are well within the regulation power of the state."

This of course is exactly the issue in this case.

Although a State such as the State of Illinois may not generally prohibit individuals with a common interest from joining together to petition a court for a redress of their grievances, it is certain that any State may impose reasonable regulations limiting the permissible form of litigation and the manner of legal representation within its borders. Thus the State of Illinois may, without violating protected rights, restrict those undertaking to represent others in legal proceedings to properly qualified lawyers. Further it may determine that a union, corporation or association whether organized for profit or not for profit does not itself have a legal standing to litigate the interest of its members or stockholders and that only individuals with a direct legal interest of their own may press their claims in its courts. It may also determine that a union, corporation or association whether organized for profit or not for profit may not employ an attorney on a salary to represent its members and their members' dependents with respect to their legal claims. These types of state regulations are undeniably matters of legitimate concern to the State of Illinois and their possible impact on the rights of expression and association are far too remote to cause any doubt as to their validity.

The question of the salaried attorney plan of United Mine Workers, District 12 is in essence whether the particular regulation of conduct concerning litigation has a reasonable relation to the furtherance of a proper State interest and whether that interest outweighs any foreseeable harm to the furtherance of protected freedoms.

[fol. 109] This Court has already determined that the State of Illinois does in fact have a proper interest which outweighs any foreseeable harm to protected rights in the regulation of the practice of law and has firmly and repeatedly held that lay groups which employ attorneys to represent their members and their members' dependents are engaged in the unauthorized practice of law. (*People ex rel. Courtney* v. *Association of Real Estate Taxpayers of Illinois,* 354 Ill. 102; *People ex rel. Chicago Bar Association* v. *Motorists Association of Illinois,* 354 Ill. 595; *People ex rel. Chicago Bar Association* v. *Chicago Motor Club,* 362 Ill. 50; *In re Brotherhood of Railroad Trainmen,* 13 Ill. 2d 391.)

III.

This Court has consistently held that organizations, including not for profit organizations, which hire lawyers to represent their members are engaging in the unauthorized practice of law.

The Association of Real Estate Taxpayers of Illinois, an Illinois not for profit corporation, engaged in furnishing its members with advice and assistance in connection with real estate tax problems. They employed attorneys who did the court work. These attorneys were paid by the corporation.

This Court in that case (*People ex rel. Courtney* v. *Association of Real Estate Taxpayers of Illinois,* 354 Ill. 102) stated (pages 108-110):

> "The question presented to this court is whether or not the respondent is in contempt of this court by having engaged in the practice of law. It is well settled law that this court has jurisdiction and may in an original proceeding punish both natural persons or corporations engaging in the unauthorized practice [fol. 110] of law, for contempt. (*People* v. *Peoples Stock Yards State Bank,* 344 Ill. 462.) That relation of trust and confidence essential to the relation of attorney

and client did not exist between the members of the respondent association and its attorneys, and whatever relation of trust and confidence existed was between the membership and the association. * * * Much that was said in *People* v. *Peoples Stock Yards State Bank,* supra, is controlling in this case as to the question of the respondent's having practiced law. In that decision this court said, among other things: 'Practicing as an attorney or counselor at law according to the laws and customs of our courts is the giving of advice or rendition of any sort of services by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill. * * * According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceeding and the management of such actions and proceedings on behalf of clients before judges and courts, and, in addition, conveyancing, the preparation of legal instruments of all kinds, and, in general, all advice to clients and all action taken for them in matters connected with the law. * * * Respondent in the present case has, beyond question, deliberately engaged in the unauthorized practice of law. * * * That it used for that purpose the service of licensed attorneys in its employ does not alter the fact that it was thus practicing law. * * *'.

"While the legislature of our State has fixed a penalty for the unlawful practice of law, yet the legislature cannot exempt any person, legal or natural, from prosecution for contempt for engaging in the practice of law. To practice law a person must comply with the require-
[fol. 111] ments laid down by this court. (*In re Day,* 181 Ill. 73.) It is well settled that no corporation can be licensed to practice law. The fact that the respondent was a corporation organized not for profit does not vary the rule."

The Mine Workers attempt to distinguish this case from their present practices by saying that an association like the Taxpayers Association sought law business, while they, on the other hand, seek no law business and wish that they had none. This does not alter the fact that they are, however, engaging in the unauthorized practice of law, as were the *Taxpayers,* by means of their salaried attorney plan.

The decision in the *Taxpayers* case was immediately followed by the decision of this Court in the *Motorists* case. The Motorists Association, an Illinois not for profit corporation, was organized and, through a licensed attorney, furnished legal assistance to motorists. They covered claims for damages, inquests, arrests and charges.

This Court in that case (*People ex rel. Chicago Bar Association* v. *The Motorists Association of Illinois,* 354 Ill. 595) stated (pages 598-599):

> "It requires no discussion to demonstrate that the services so rendered by respondent for its members, through the attorneys employed by respondent, are legal services. (*People* v. *Peoples Stock Yards Bank,* 344 Ill. 462.) Although respondent denies that its conduct constituted the practice of law, its principal contention is that it is entitled to practice law by virtue of the fact that it is a corporation organized 'not for profit' and that it is therefore not prohibited from practicing law. In support of this contention it relies upon 'An act to prohibit corporations from practicing law, directly or indirectly, making the same a misdemeanor and providing penalties for the violation there- [fol. 112] of.' (*Cahill's Stat.* 1933, chap. 32, pars. 224-228.) Section 1 of the act prohibits corporations from practicing law. Section 5 provides that the act shall not apply to 'corporations organized not for pecuniary profit.' The same section, however, also provides as follows: 'But no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this State

nor to solicit directly or indirectly professional employment for a lawyer.'

"In *People* v. *Peoples Stock Yards Bank,* supra, we recognized that it was within the power of the legislature to pass an act prohibiting corporations from practicing law and to provide a penalty for violations of the act, but we also indicated clearly that the legislature had no authority to license or permit a person to practice law in this State, and that such an act would be invalid if it sought in any way to tie the hands of this court in determining who should be permitted to practice law and in punishing those who engage in such practice without the permission of this court. (*In re Day,* 181 Ill. 73.) In *People* v. *Association of Real Estate Taxpayers,* 354 Ill. 102, following the well settled rule, we held that a corporation cannot be licensed to practice law, and that this rule applies to corporations organized not for profit.

"There can be no question from this record but that respondent wrongfully engaged in the practice of law for several years."

This case just as clearly as the *Taxpayers* case condemns the salaried attorney practice.

The condemnation of this Court with reference to the salaried attorney plan found its sharpest focus in *Chicago Motor Club* case. The Chicago Motor Club, an Illinois corporation organized not for profit, engaged in furnishing [fol. 113] legal services to its members through licensed attorneys.

This Court in *People ex rel. Chicago Bar Association* v. *Chicago Motor Club,* 362 Ill. 50 stated (pages 56-57):

"By way of exception to the findings of the commissioner, respondent claims there is no admission in the record that it solicited memberships for the purpose of performing legal services; that the corporation itself performed no legal services, but such as were in fact

performed were by lawyers engaged by respondent for its members pursuant to authority received by it from them; that such legal services were paid for out of dues collected by respondent from its members as their representative and agent. It is further contended that respondent is not engaged in the practice of law within its ordinarily accepted sense, but that its legal functions are only a part of its many-sided activities as a service organization whose members have a common interest.

"However beneficial its many other purposes and services seem to be to its members and to the public generally, we cannot condone the advertisements and solicitations of memberships by respondent and its admission that it was only acting as agent in rendering legal services for its members without abandoning the rules laid down in several recent cases governing such practices. While the case of *People* v. *Peoples Stock Yards Bank,* 344 Ill. 462, is distinguishable from the present case in many respects, *yet the fundamental principle was there expressed that 'a corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it.'* (emphasis ours) When the Chicago Motor Club offered legal services to its members with the statement, 'should you be arrested for an alleged violation of the Motor Vehicle law, you may call the legal department, and one of our attorneys will conduct your defense in court,' it was engaging in the [fol. 114] business of hiring lawyers to practice law for its members. This we have repeatedly condemned in Illinois. (*People* v. *Peoples Stock Yards Bank,* supra; *People* v. *Motorists Ass'n.,* 354 Ill. 595; *People* v. *Real Estate Tax-Payers,* 354 id. 102.) Other jurisdictions have reached the same or similar conclusions in recent cases. (*Goodman* v. *Motorists Alliance,* 29 Ohio N.P.R. 31; *In re Morse,* 98 Vt. 85, 126 Atl. 550; *In re Opinion of the Justices,* 194 N.E. (Mass.) 313; *Rhode Island Bar Ass'n.* v. *Automobile Service Ass'n.,* 179 Atl. (R.I.)

139, (decided May 9, 1935.) The fact that respondent was a corporation organized not for profit does not vary the rule. *People* v. *Real Estate Tax-payers,* supra.

"Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this State. In practically every jurisdiction where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized, and that no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if that service were a commodity which could be advertised, bought, sold and delivered. (emphasis ours) The present case offers no exception to the rule, notwithstanding the other beneficial services rendered by respondent to its members and to the public generally."

Clearly the *Taxpayers* case, the *Motorists* case, and the *Chicago Motor Club* case state that a corporation or association may not practice law nor may they hire or retain attorneys to represent their employees or members. The law in Illinois is absolutely and definitely clear on this subject. There is no difference between United Mine Workers, District 12, employing an attorney on a salary basis to represent members of the union with reference to claims arising under the Workmen's Compensation Act of Illinois [fol. 115] and the *Taxpayers, Motorists* or *Chicago Motor Club* employing attorneys to represent their members in their respective spheres of legal activity. It simply is the unauthorized practice of law by the Union.

The Mine Workers in fact appear in their brief (page 11) to be offering the same arguments that the Chicago Motor Club offered to this Court. They argue that "the legal fiction is misapplied and wholly unapplicable in the case at bar for the reason that the defendants seek and desire no law business. All they do is take care of their own law business, and the less they have the better."

We wonder if there is any difference between this argument and the rejected argument of the Chicago Motor Club to wit (page 56):

> "By way of exception to the findings of the commissioner, respondent claims there is no admission in the record that it solicited memberships for the purpose of performing legal services; that the corporation itself performed no legal services, but such as were in fact performed were by lawyers engaged by respondent for its members pursuant to authority received by it from them; that such legal services were paid for out of dues collected by respondent from its members as their representative and agent. It is further contended that respondent is not engaged in the practice of law within its ordinarily accepted sense, but that its legal functions are only a part of its many-sided activities as a service organization whose members have a common interest."

Is this not in fact the identical argument of United Mine Workers, District 12? We think it is.

[fol. 116]

IV.

The Illinois Brotherhood case clearly states that a union may recommend lawyers to its members, but there may be no financial connection of any kind between the lawyers and the union.

In re Brotherhood of Railroad Trainmen, 13 Ill. 2d 391, the Brotherhood of Railroad Trainmen, a labor organization, had established a "Legal Aid Department" in 1930 because it felt that the claims of its members resulting from injuries suffered in their work were being settled for unfair amounts under pressure from railroad claim agents and by the threat of loss of employment, and because the members were being solicited by lawyers of varying degrees of competence who handled claims of members on contingent fees that sometimes ran as high as 50% of the amount recovered.

The Brotherhood legal aid department was located in Cleveland, Ohio. Operating in conjunction with the legal aid department were regional counsel and regional investigators. By agreement with the Brotherhood, the attorneys designated as regional counsel charged a fee of 25% of the amount recovered in each case, whether recovery was by settlement or by judgment, which 25% included all expenses of investigation and litigation.

Each local lodge of the Brotherhood appointed a member to report member's injuries, to contact the injured man or the relatives of a member who was killed, to make known that legal advice by the regional counsel was available free of charge, and to make known the availability of regional counsel to handle the claim for the contingent 25% fee. The lodge member so appointed would recommend and urge the employment of regional counsel. He [fol. 117] carried blank copies of contracts employing the regional counsel's firm as attorneys. If a signed contract were not obtained in the field, the injured man and often his wife would be brought to the office of the regional counsel in Chicago, all at the latter's expense.

The Brotherhood argued (1) that its method of handling the personal injury and death claims of its members was permissible because under the Railway Labor Act, the Brotherhood is authorized to represent its members before the National Railroad Adjustment Board or other appropriate tribunals in the processing of disputes growing out of grievances; (2) that the interest of the members of the Brotherhood in legal developments in Federal Employers' Liability Act cases is comparable to the interest of the insurance companies who are permitted to take over the defense of claims against their policy holders; and (3) that as a matter of policy, injured trainmen, and the representatives of deceased trainmen, are entitled to procedures that will insure that they receive competent legal advice for reasonable fees in matters involving personal injury incurred during the course of employment.

In answer to the first argument, this Court pointed out (page 395) that injury and death claims are not the kind of labor disputes contemplated by the Railway Labor Act and that there is nothing to suggest that Congress intended by that Act any more than by the Labor Management Relations Act to overthrow State regulation of the practice of law. With reference to the attempted analogy to insurance company procedures, this Court stated (page 395) that the interest of the insurance company is of a different kind—the money involved is its money—and that the interest of [fol. 118] the Brotherhood in the individual claims of its members does not authorize it to engage in the active solicitation of those claims for particular lawyers who finance the solicitation. In response to the policy argument, this Court (page 396) found it to be insufficient to override the principles that must govern the members of the legal profession in their relations with clients.

While recognizing that its holdings with respect to the arguments of the Brotherhood would ordinarily be sufficient, this Court deemed it appropriate, under the circumstances, to indicate in broad outline what the Brotherhood may do with respect to the injury and death claims of its members. Stating that the Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured, which interest antedates the occurrence of any particular injury, this Court stated (pages 397-398) that the Brotherhood:

> (1) May maintain a staff to investigate injuries to its members, may so conduct those investigations that their results are of maximum value to its members in prosecuting their individual claims, may make the reports of investigations available to the injured man or his survivors, and may finance such investigations by the 218,000 members of the Brotherhood.
>
> (2) May make known to its members generally, and to injured members and their survivors in particular:

(a) The advisability of obtaining legal advice before making a settlement, and

(b) The names of attorneys who, in its opinion, have the capacity to handle such claims successfully.

(3) May not cause or permit its employees to carry [fol. 11?] contracts for the employment of any lawyer, or photostats of settlement checks.

(4) *May not have any financial connection of any kind with any lawyer handling injury and death claims of members or their survivors.* (emphasis ours)

(5) May not fix the fees to be charged for legal services to its members.

There is no question that the Mine Workers are squarely in violation of the outlines which this Court gave in this opinion. There is a direct financial connection between the United Mine Workers, District 12, and Attorney Stuart J. Traynor. Mr. Traynor is paid $12,400.00 a year by United Mine Workers, District 12, for handling the injury and death claims of the members of the Union and their dependents before the Illinois Industrial Commission. The violation is totally obvious.

V.

The Virginia Brotherhood case holds that a union may recommend lawyers to its members and therefore it is in accord with the decision of this Court in the Illinois Brotherhood case.

The Virginia State Bar brought this suit against the Brotherhood of Railroad Trainmen to enjoin them from carrying on activities which, the Bar charged, constituted the solicitation of legal business and the unauthorized practice of law in Virginia. It was conceded that in order to assist the prosecution of claims arising under federal statutes by injured railroad workers or by families of workers killed on the job, the Brotherhood maintained in Virginia

and throughout the country a Department of Legal Counsel which recommended to Brotherhood members and their families the name of lawyers whom the Brotherhood be-
[fol. 120] lieve to be honest and competent. Finding that the Brotherhood plan resulted in the channeling of all or substantially all of the worker's claims to lawyers chosen by the Department of Legal Counsel, the Chancery Court of the City of Richmond, Virginia, issue an injunction against the Brotherhood carrying out its plan in Virginia. The Supreme Court of Appeals of Virginia affirmed the injunction and the United States Supreme Court granted certiorari.

The United States Supreme Court, after reviewing the history of the Brotherhood plan and the operations of the Brotherhood's Department of Legal Counsel, held (page 8)

> "We hold that the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice *and for recommending specific lawyers.*" (Emphasis ours)

The Virginia Brotherhood case in no way purports to change, modify or extend the decision of this Court in in the Illinois Brotherhood case. Both cases hold that a union may recommend lawyers to its members, not that it may practice law by hiring attorneys on a salary basis.

VI.

The professional services of a lawyer should not be controlled or exploited by a lay agency which intervenes between client and lawyer. A lawyer's relation to his client should be personal and his responsibility should be directly to the client.

The Mine Workers in their brief make a very interesting surmise when they state (page 10)

> [fol. 121] "When a member of District 12, United Mine Workers of America, desire the services of the

> Workmen's Compensation attorney, and the attorney assumes the responsibility, the personal relation immediately exists and the attorneys professional and ethical obligations to his client automatically attach themselves to that relationship."

A very routine perusal of the record belies this statement.

Stuart J. Traynor, Esq., the so-called Workmen's Compensation attorney for the defendants-appellants, explained in his deposition how the United Mine Workers District plan works.

The United Mine Workers, District 12 makes available to their members who are injured a form entitled Report to Attorney on Accidents, Legal Department—United Mine Workers of America, District 12, which is filled out by the injured member and then sent by the injured member to one of the offices of the United Mine Workers, District 12. (Add. Abst. 8-14) Mr. Traynor testified that he then "presumed" that when the injured member filed this form with the legal department of the union he desired Mr. Traynor to file his case with the Industrial Commission. (Add. Abst. 8-14) Mr. Traynor conceded that as a matter of fact there is no language on this form which in any way instructs him to file a claim with the Industrial Commission or employs him as the attorney for the injured member. (Add. Abst. 14) The record is quite clear that when the injured worker files the union accident report form with the legal department of the union, Mr. Traynor thereupon presumes that he is then to act as the attorney for the injured member, there being of course no personal contact between the "presumed" attorney and the injured member at this juncture. The [fol. 122] injured member without personally selecting his own attorney or Mr. Traynor is now represented by Mr. Traynor whether he likes it or not.

Mr. Traynor next testified that the secretaries of United Mine Workers, District 12 fill out the application for ad-

justment of claim, type in the name of the injured member, are authorized to sign his name to the claim form and send the claim form directly to the Industrial Commission. (Add. Abst. 14-16) Mr. Traynor conceded that at the time the claim form is filed with the Industrial Commission in most instances he has never even seen the injured member. (Add. Abst. 14-16) Is this what the defendants mean when they say that the personal relationship of attorney-client immediately exists?

Mr. Traynor continuing, testified that he does not send out any specific instructions to the injured members to see him before the day their claim is to be presented to the Industrial Commission and that, generally speaking, the only thing an injured member receives is a notice to appear before the Industrial Commission on a certain day. (Add. Abst. 20) He further testified that he prepares his representation or presentation of the injured member's claim from his file on the claim. (Add. Abst. 21-23)

It is perfectly obvious that there is simply no attorney-client relationship in at least most instances until attorney and client meet for the first time on the day that the claim is to be heard by the Industrial Commission.

We of the organized Bar are sincerely interested in seeing to it that the United Mine Workers have competent legal representation, but we feel that only through [fol. 123] an independent attorney operating in the traditional attorney-client relationship can this be accomplished. How can the injured member of United Mine Workers, District 12, find proper legal satisfaction for his claim when his claim is merely part of a mass production of claims by an attorney he has in most instances never even met before the day the hearing on his claim is held?

VII.

Summary Judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein there is no genuine issue as to any material fact, is to be encouraged.

In *Allen* v. *Meyer*, 14 Ill. 2d 284, this Court said (pages 291-292):

> "For many years we have held that the entry of summary judgment or decree is proper only where the issues involved are simple in nature and the legal consequences of those facts conclusive. (*Ward* v. *Sampson*, 391 Ill. 585). These decisions, however, were handed down under the provisions of a practice statute which then severally limited the classes of cases in which summary disposition could be made. The statute has since been amended to provide for the entry of summary judgment or decree in any proper case (*Ill. Rev. Stat.* 1957, chap. 110, par. 57). We regard this as a salutory development. Summary judgment procedure is an important tool in the administration of justice. Its use in a proper case, wherein is presented no genuine issue as to any material fact, is to be encouraged. * * *
>
> "In the instant case both parties moved for summary judgment and thereby the court was invited to decide the issues by reference to its file. It is clear that all material facts were before the court; the issues were defined; and the parties were agreed that only a question of law was involved. * * *
> [fol. 124] "The Court properly treated each party's motion as being not only an application for a summary decree, but a reply to the motion of his adversary. This was the proper interpretation under the circumstances. On the facts of this case, the affidavits of each party were presented, not only in support of its own motion, but as a counter-affidavit opposing the motion of its adversary. Each party thereby admitted the sufficiency of his opponent's motion and supporting affidavit. *Grant* v. *Reilly*, 346 Ill. App. 399."

The defendants now contend on page 11 of their brief,

> "There is not a word in the record to sustain the inhibition by the Circuit Court against (1) giving

legal counsel and advice; (2) rendering legal opinions; (3) representing themselves in any claims other than under the Workmen's Compensation Act; (4) employing attorneys to represent them in any other kinds of claims; and (5) practicing law in any form directly or indirectly."

A simple reading of our motion for summary judgment and supporting affidavit, of which the defendants-appellants admitted the sufficiency based on the record when they filed their corresponding motion for summary decree, discloses that the aforesaid was, in fact, a part of the relief for which we asked. (Abst. 27-29) We wonder why the defendants-appellants now come in to this Court and seek to attack the relief which they admitted was present for the Circuit Court to grant.

The order of the Circuit Court finds that the defendants as a matter of law are engaging in the unauthorized practice of law when they engage in the United Mine Workers, District 12, plan. Obviously they are doing all of the things which the order permanently enjoins them from doing when they are so engaged.

[fol. 125] CONCLUSION

This is not a pettifogging suit originated by a group of malcontented attorneys, but is a considered action by the members of a duly constituted Committee of the Illinois State Bar Association. Members of this Committee, as plaintiffs, are exercising their duty in the public interest for the protection of the public and the legal profession.

The members of the Unauthorized Practice of Law Committee are sincerely interested in making available to the individual members of United Mine Workers, District 12 and their dependents the best possible legal services available. An examination of the record in this case, however, conclusively shows to this Court that the union members and their dependents are not receiving such legal services. The number of applications for adjustment of

claim filed by the present attorney and his predecessors and the amount of money awarded by the Illinois Industrial Commission to union members and their dependents demonstrates that we are dealing with a serious question of public welfare. No injured union member is getting the best possible legal services when the union employed attorney relies in preparing his representation upon documents obtained without personal contact with his client and when the union employed attorney in fact meets his client for the first time at the hearing before the Illinois Industrial Commission with reference to his client's claim.

It is also evident from the number of claims filed and the number of claims disposed of in any given year, that the union employed attorney is involved in mass production business as evidenced by the year 1964 when 487 claims [fol. 126] were conducted for a total of $528,885.12. Volume business is no substitute for personal attention. The only beneficiaries of this type of practice are the coal companies and their insurance carriers and most certainly not the injured union members.

If for example the 487 claims concluded in 1964 had been handled on an individual basis by attorneys retained by the individual injured union members we wonder what the total recovery figure might have been.

The solution to the above is very simple. It has been available to United Mine Workers, District 12 for many years and has been suggested many times to the Mine Workers by the members of the Unauthorized Practice of Law Committee. *The solution is of course that the Mine Workers make available to their members and their members' dependents a list of attorneys whom they feel can properly handle their members' legal claims. From this list, each individual may then select his attorney.* Since there are obviously many Illinois attorneys who are well qualified to handle compensation claims, the injured member or his dependent will be well represented. There is no need nor no right for the Mine Workers, by the vehicle of a salaried attorney, to control the law business of their mem-

bers and their members' dependents and to interpose themselves between attorney and client.

When an attorney is employed by a union, or for that matter any association or corporation, to represent individual litigants, two problems immediately arise. The lawyer becomes subject to the control of a body which is not itself a litigant and which, quite unlike the lawyers it employs, is not subject to strict professional discipline [fol. 127] as an officer of the court. In addition the lawyer necessarily finds himself with a divided allegiance—to his employer and to his client—which may very well prevent full compliance with his basic professional obligations.

There is certainly no logical nor legal reason to suppose that if an attorney can be hired on a salary basis to represent members of an organization like United Mine Workers, District 12, with reference to compensation cases before the Industrial Commission of the State of Illinois why in due course that attorney could not easily and quickly enlarge his representation of members of an organization and the members' dependents to include personal injury, probate and divorce matters to mention only a very few.

This case is an attempt to open the door onto a situation where a lay group, such as the Mine Workers, would hire an attorney on a salary basis to represent their members and their members' dependents in all phases of their legal problems. We cannot believe that this Court will allow this to happen.

This case puts the legal profession at a vital crossroads. It poses in effect the question of whether the lawyer is to remain an independent practitioner or whether he is to become a dependent employee of the lay group. The moment we allow lay groups to control lawyers, the legal profession loses its independence. It is essential to our society that the legal profession continue to maintain its independence so that lawyers can never be subverted to the will of one part of our society at the expense of other parts. [fol. 128] We respectfully request that in the public in-

terest the order of the Circuit Court of Sangamon County be affirmed.

Respectfully submitted,

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Attorneys for Plaintiffs-Appellees.

[fol. 129] Clerk's Certificate to foregoing papers (omitted in printing).

[fol. 130]

IN THE SUPREME COURT OF ILLINOIS

Docket No. 39642—Agenda 28—March, 1966.

ILLINOIS STATE BAR ASSOCIATION et al., Appellees,

v.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, Appellant.

OPINION—Filed May 23, 1966

PER CURIAM: The Illinois State Bar Association and others, individually and as members of the Committee on Unauthorized Practice of Law, filed a complaint in the circuit court of Sangamon County seeking to restrain defendant, United Mine Workers of America, District 12, from engaging in activities alleged to constitute the unauthorized practice of law. The trial court entered a summary decree granting the relief requested. From that determination the Mine Workers appeal, contending that the decree violates the first and fourteenth amendments to the United States constitution.

The facts are substantially undisputed. For many years, the Mine Workers, a voluntary association, has employed a licensed attorney on a salary basis to represent members and their dependents in connection with claims for personal injury and death under the Workmen's Compensation Act. It is understood and provided that members may employ other counsel if they so desire. Selection of the attorney was made by the Executive Board of District 12, and the terms of his employment agreed upon by the acting president and the attorney pursuant to board authorization. The letter from the former to the latter outlining the terms of employment contains the following sentence: "You will receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent."

The plan, as described by the current salaried attorney, operates as follows: Injured members are furnished forms by the union entitled "Report to Attorney on Accidents" which advise such injured members to fill out and send the forms to the Legal Department, District 12, United Mine Workers of America. When one of such forms is received by the legal department the salaried attorney presumes that it constitutes a request that he file with the Industrial Commission an application for adjustment of claim on behalf of the injured union member although there is no language appearing on the form which specifically requests that the salaried attorney file such claim. The application for adjustment of claim is prepared by secretaries in the union [fol. 131] offices and when completed is sent by the secretaries directly to the Industrial Commission. In most instances the salaried attorney has not seen or conferred with the injured member at the time the claim is filed with the commission, although it is understood by the union membership that the attorney is available for conferences on certain days at particular locations. Between the time the claim is filed and the hearing before the commission, the salaried attorney prepares his case from his file and from examination of the application, usually without having a

conference with the union member with regard to the latter's claim. Ordinarily, the only thing an injured member receives concerning his claim is a notice to appear before the Industrial Commission, and usually this is the first time the attorney and the injured member come into contact with each other.

The attorney determines what he believes the claim is worth, presents his views to the attorney for the respondent coal company during prehearing negotiation, and attempts to reach a settlement. If the coal company agrees with the Mine Workers' attorney, the latter recommends to the injured member that he accept such resolution of his claim. If a settlement is not reached, a hearing on the merits of the claim is held before the Industrial Commission.

The full amount of the settlement or award is paid directly to the injured member. No deductions are taken therefrom, and the attorney receives no part thereof, his entire compensation being his annual salary paid by the union.

The question for decision is whether the above related activities amount to the unauthorized practice of law by the Mine Workers under prior determinations of this court, and, if so, whether such activity is nevertheless protected by the first and fourteenth amendments to the United States constitution.

It may be noted here that the services rendered the union members in the handling of their compensation claims were legal services and that one who performs them is engaged in the practice of law. *People ex rel. Chicago Bar Association* v. *Goodman,* 366 Ill. 346.

It is argued by the Illinois State Federation of Labor and Congress of Industrial Organizations, AFL-CIO, as *amicus curiae,* that since the United Mine Workers, District 12, is a voluntary, unincorporated association and not a legal entity separate and apart from its constituency, there is no problem concerning the existence of a lay intermediary between the individual member and the attorney. Under [fol. 132] this view, the attorney is merely employed collec-

tively by the members of the association to present claims before the Industrial Commission. While it is correct that it has been held that a voluntary association such as the Mine Workers is not a legal entity amenable to process and suit at law (*Gahill* v. *Plumbers, Gas and Steam Fitters' and Helpers' Local 93,* 238 Ill. App. 123, 127; *Chicago Grain Trimmers Association* v. *Murphy,* 389 Ill. 102, 109; 4 Am. Jur., Associations & Clubs, par. 41), this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship. (As to whether unincorporated labor unions should be treated as "entities", see The Legal Status and Suability of Labor Organizations, 28 Temple Law Quarterly 1.) In any event we are concerned here not with legal forms, but activities of the association. It is the latter which must determine whether the association is engaging in the unauthorized practice of law. See *Rhode Island Bar Association* v. *Automobile Service Association,* 55 R.I. 122, 179 Atl. 139.

It is clear that under the prior decisions of this court, organizations, including not-for-profit organizations, which hire or retain lawyers to represent their individual members in legal matters are ordinarily engaging in the unauthorized practice of law. (*People ex rel. Courtney* v. *Association of Real Estate Tax-payers of Illinois,* 354 Ill. 102; *People ex rel. Chicago Bar Association* v. *The Motorists Association of Illinois,* 354 Ill. 595; *People ex rel. Chicago Bar Association* v. *Chicago Motor Club,* 362 Ill. 50.) The underlying reasons for such conclusion are that the "relation of trust and confidence essential to the relation of attorney and client did not exist between the members of the respondent association and its attorneys, and whatever relation of trust and confidence existed was between the membership and the association." (*People ex rel. Courtney* v. *Association of Real Estate Tax-payers,* p. 109). And, as was said in *Chicago Motor Club,* p. 57: "Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this State. In prac-

tically every jurisdiction where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized, and that no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if [fol. 133] that service were a commodity which could be advertised, bought, sold and delivered."

See also, *People ex rel. Chicago Bar Association* v. *Goodman,* 366 Ill. 346, a case involving a lay respondent's employment of lawyers to represent injured persons whose workmen's compensation claims respondent was attempting to settle, where the court said at page 356: "The faithful observance of the fiduciary and confidential relationship between attorney and client is one of the greatest traditions of the legal profession. In Goodman's business that relationship is absent as to the litigant whom the attorney employed by Goodman purportedly represents. The respondent is the attorney's real client and paymaster, and the one to whom the attorney owes allegiance."

Thought to be of paramount importance to the public is the preservation of the integrity of the lawyer-client relationship involving the highest degree of trust and confidence, and an unswerving dedication of the lawyer's abilities to the interests of his client. Intervention in this relationship of third-party organizations by whom lawyers are directly employed and compensated to handle personal claims of organization members has generally been prohibited. See cases in 7 Am. Jur. 2d, p. 100; 157 A.L.R. 292.

In *In Re Brotherhood of Railroad Trainmen,* 13 Ill. 2d 391, this court applied the foregoing considerations to an organization similar in structure to the United Mine Workers Association. There, the brotherhood, through its Legal Aid Dpeartment, had established a nationwide scheme whereby "regional counsel" were selected by the Brotherhood. These attorneys paid the departmental operating costs and were, in turn, recommended to individual brotherhood members as competent to represent them on personal injury and death claims. In that case this court held imper-

missible any "financial connection of any kind between the Brotherhood and any lawyer" in connection with personal injury claims of brotherhood members. However, the court specifically set forth an alternate plan which would be permissible. Reference thereto is appropriate here. It was there stated: "The Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured. That interest antedates the occurrence of any particular injury. We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of maximum value to its [fol. 134] members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors. Such investigations can be financed directly and without undue burden by the 218,000 members of the Brotherhood. The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully." (13 Ill. 2d at pages 397-98.) We also specifically refuted the argument, presented again here, that the collective interest of the members of the union in recovering adequate compensation for bodily injury and death is largely synonymous with the individual members' interests concerning their particular claims, holding that, "While these considerations have weight, they are insufficient in our opinion to override the principles that must govern the members of the legal profession in their relations with clients."

Also relevant to our inquiry here are the Canons of Ethics of the Illinois State Bar Association and the Chicago Bar Association. While such canons do not have the force and effect of judicial decision or statutory law, they nevertheless are of interest to this court, provide guidelines to members of the profession and are helpful in reaching determinations in particular cases. Canons 35 and 47 provide:

"(35) Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs. * * *

"(47) Aiding the Unauthorized Practice of Law. [fol. 135] No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

These canons are similar to those of the American Bar Association which have been interpreted by that group as precluding the employment arrangement now before us. (Informative Opinion A of 1950 of the American Bar Association Standing Committee on Unauthorized Practice of Law.)

In our consideration of this case, the policy arguments of the Mine Workers and *amici* are impressive. There can be no question of the hazards involved in coal mining, and undoubtedly the possibility exists that injured coal miners untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements. Benefit to the miner, in that compensation of counsel under the plan here in effect is from the union treasury rather than the injured

member or his family, is not to be easily disregarded, nor is it to be denied that the organization has an active interest in securing fair treatment for its members. Arrangements whereby common interest groups provide legal services for their membership have respected advocates and are recognized as proper in varying forms by some States. (See Markus, Group Representation by Attorneys as Misconduct, 14 Cleveland-Marshall Law Review, 1, (1965).) But, persuasive as these and other considerations are, we believe as in *In Re Brotherhood of Railroad Trainmen* that they are insufficient to override the governing principles in the attorney-client relationship.

That relationship is pre-eminently personal in nature and the fundamental duty of an attorney involves undiluted loyalty to the client whom he serves and whose interests he protects, considerations we believe largely absent where the attorney has been selected and hired on a salary basis by a lay intermediary to represent individual clients. It is basically a master-servant relationship, but as the New York Court of Appeals has put it (*In Re Cooperative Law Co.*, 198 N.Y. 479, 483-4, 92 N.E. 15-16), it is such "in a limited and dignified sense, and it involves the highest trust and confidence." In the case before us, the lawyer is not directly employed by the miner for whose peculiarly personal and individual injury he seeks compensation; he is chosen and employed by the officers of the union. The lawyer is not paid for his services by the client; his salary is paid by the association. Even though the terms of the letter of employ-
[fol. 136] ment indicate no organizational direction will be given, the interests of the employer and the client in a given case may or may not be identical, since as the AFL-CIO *amicus* brief indicates, the interests of the union, collectively, may extend beyond the interest of the injured member. Conceivably, the interest of the former might be best served by utilizing a particular case as a testing vehicle for appellate review of untried legal theories in the hope of securing a determination beneficial to union members collectively in future litigation, whereas the injured mem-

ber may prefer a proffered settlement deemed wholly adequate by him. It is manifest, we believe, that these factors all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties. We, of course, do not deal here with the totally different case of a salaried lawyer for indigent clients.

We therefore conclude that the United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission. However, our inquiry does not terminate here, for it is argued that Federal statutory law and decisions of the United States Supreme Court preclude restraining the conduct engaged in by the union.

It is maintained by the Mine Workers that the circuit court decree violates their right to engage in concerted activities for the purpose of their mutual aid and protection under section 157 of the Labor Management Act. (29 U.S. C.A. 157.) However, if the conduct attacked was properly determined to constitute the unauthorized practice of law and is not protected from proscription by constitutional mandate, it cannot seriously be argued that general statutory language granting the right to union members "to engage in * * * concerted activities for the purpose of collective bargaining or other mutual aid or protection" restricts the States from regulating the practice of law. (*In Re Brotherhood of Railroad Trainmen,* 13 Ill.2d 391, 395.) Accordingly, the ultimate inquiry herein is whether the decree of the circuit court violates the guarantees of the first and fourteenth amendments to the United States constitution as interpreted by the United States Supreme Court in the cases of *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar,* 377 U.S. 1, 12 L. Ed. 2d 89, and *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 9 L. Ed. [fol. 137] 2d 405.

In *Virginia Railroad Trainmen* the court held that "the First and Fourteenth Amendments protect the right of

the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities it too must fall." 377 U.S. at p. 8.

The court there (377 U.S. 5, n.9) specifically pointed out that the railroad trainmen were objecting to only those portions of the decree encompassed by the language of the holding, as the brotherhood had denied that it was engaging in practices forbidden by our decree in *In Re Brotherhood of Railroad Trainmen,* 13 Ill.2d 391. Accordingly, that holding does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims. As a consequence, we do not read *Virginia Railroad Trainmen* as constitutionally protecting the conduct we are concerned with here, *i.e.* employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission. The circuit court decree in question here does not attempt to restrain the union from advising its members to seek legal advice or from recommending particular attorneys thought competent to handle workmen's compensation claims. As related earlier, our decision in *In Re Brotherhood of Railroad Trainmen* specifically allows such conduct.

In *N.A.A.C.P.* v. *Button,* the Supreme Court of the United States held that a system devised by the N.A.A.C.P. to furnish and recommend attorneys (who were apparently compensated on a *per diem* basis by the organization in connection with each case handled) to member litigants for the prosecution of civil rights cases was constitutionally protected by the first and fourteenth amendments. However, the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot as such be equated with the bodily injury litigation with which we are concerned here. Also, it is to be noted that an

apparent dearth of Virginia lawyers willing to handle civil rights litigation was deemed of some importance by the Supreme Court, and at least Mr. Justice Douglas was influenced by his conclusion that the State's attempt to characterize the N.A.A.C.P.'s activities as "solicitation" indi- [fol. 138] cated a legislative purpose to penalize that group because of desegregation activities. Further, the majority opinion there read the decree of the Virginia Supreme Court of Appeals "as proscribing any arrangement by which prospective litigants are advised to seek the assistance of particular attorneys." (371 U.S. at page 433.) Under such construction, the decree was deemed violative of the first and fourteenth amendment freedoms of speech and expression.

Such is not the case here, as indicated earlier. We held in the *Illinois Brotherhood* case, and the bar associations now concede, that the Mine Workers may validly advise their members to seek legal advice in connection with these claims and may properly recommend particular attorneys deemed competent to handle such litigation.

Each of the opinions in these cases (*Virginia Railroad Trainmen* and *Button*) recognizes the right of individual States to regulate the practice of law and those who practice it insofar as such regulations do not infringe upon first amendment guarantees relating to freedom of association and expression. If infringement results, it is sustainable upon a showing of a compelling State interest. It seems to us that the compelling quality of the State interest, sufficient to justify State regulation here, may well be something less than the quality required to restrict constitutional litigation of the magnitude embraced in *Button*. We seriously doubt that proscription of this salary arrangement constitutes infringement of constitutionally protected rights of the union members. If it be thought to do so, however, we believe it permissible in view of the interest of the State in controlling standards of professional conduct. The prohibition of payment by the organization of the compensation of the lawyer who represents the individual union mem-

ber seeking redress for his injuries certainly may not be said to be direct suppression of the member's first amendment right to petition the courts. Nor do we think that his right so to do is impaired in a constitutionally objectionable sense unless it can be said that reduction in the net dollar amount remaining to him from the injury award after payment by the member of his attorney fees is a constitutionally impermissible impairment. Such it might be were we dealing with indigent claimants, but we are not, and the net effect upon the union member differs not at all from that upon other injured citizens.

Should the conduct manifested here be allowed, substantial commercialization of the law profession may follow. Arguably, if a labor union may hire salaried attorneys to [fol. 139] represent its individual constituents in occupationally-caused injury litigation, it may expand such activity to encompass legal problems involving domestic relations, contracts, criminal law and other areas of the legal field, for the union collectively is interested in the total welfare of its individual members. It would seem possible, and even likely, that any group of individuals with a similarity of interests would be allowed to associate for the purpose of hiring salaried attorneys to represent its individual members, and that the integrity and personal nature of the attorney-client relationship would thus be substantially impaired, a result we believe contrary to the interest of the public.

The decree of the circuit court of Sangamon County is affirmed.

Decree affirmed.

[fol. 140]

IN THE SUPREME COURT OF ILLINOIS

Appeal from Circuit Court Sangamon County
1572-64

ILLINOIS STATE BAR ASSOCIATION, Appellee,

No. 39642 vs.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, Appellant.

JUDGMENT—May 23, 1966

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the decree of the Circuit Court of Sangamon County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this day of , 19 .

.....

Clerk,
Supreme Court of the State of Illinois.

[fol. 141] [File endorsement omitted]

[fol. 142]

IN THE SUPREME COURT OF ILLINOIS

No. 39,642

[Title omitted]

PETITION FOR REHEARING—Filed June 6, 1966

Now come District 12, United Mine Workers of America, by Edmund Burke, their attorney, and present herewith their petition for re-hearing of the above entitled cause and respectfully pray that a rehearing be granted in said cause upon the grounds and for the reasons hereinafter set forth in their petition herewith presented.

Edmund Burke, Attorney for Defendants-Appellants.

[fol. 143]

IN THE SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—
September 21, 1966

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 144] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 145]

SUPREME COURT OF THE UNITED STATES

No. 884—October Term, 1966

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioner,

v.

ILLINOIS STATE BAR ASSOCIATION et al.

ORDER ALLOWING CERTIORARI—February 27, 1967

The petition herein for a writ of certiorari to the Supreme Court of Illinois is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.